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NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 25th March 1963:—

Issue No.	No. and Date	Issued by	Subject
47	S.O. 680, dated 16th March, 1963.	Ministry of Steel & Heavy Industries.	Amendments to Notifications No. S.O. 1719/Ess. Comm/ Iron & Steel/AM(65), dated 1st June, 1962 and No. S.O. 3633/Ess Comm/ Iron & Steel /27/(1)/AM(70), dated 28th November, 1962 published in 2nd June 1962 and 8th December, 1962 respectively.
48	S.O. 681, dated 18th March, 1963.	Election Commission, India.	Calling upon the Belgaum Parliamentary Constituency to elect before the 3rd May, 1963, a person to fill the vacancy caused by reason of the death of Shri Balvantrao Nagesharao Datar.
	S.O. 682, dated 18th March, 1963.	Ditto.	Appointing the last date of nominations; the date for the scrutiny of nominations; the last date for the withdrawal of candidatures; the date on which poll shall be taken and the date before which the election shall be completed.
	S.O. 683, dated 18th March, 1963.	Ditto.	Fixing the hours from 8·00 A.M. to 5·00 P.M. as the hours during which a poll shall be taken.
49	S.O. 684, dated 18th March, 1963.	Election Commission, India.	Amendments to Notification No. 434/GJ/61, dated the 21st October, 1961.
50	S.O. 874, dated 21st March, 1963.	Delimitation Commission	Determining the number of seats in the House of the People to be allocated to each States on the basis of the latest census figures.

Issue No.	No. and Date	Issued by	Subject
51	S.O. 875, dated 22nd March, 1963.	Ministry of Labour & Employment.	Exempting for a period of six months from 30th September, 1962 to the 31st March, 1963 from the provisions of the Employee's Provident Funds Act, 1952 (19 of 1952), such class of establishments as are factories in the Cashew-nut industry as were covered by the said Act.
52	S.O. 876, dated 23rd March, 1963.	Cabinet Secretariat	Amendments in the Government of India (Allocation of Business) Rules, 1961.
53	S.O. 877, dated 23rd March, 1963.	Ministry of Information & Broadcasting.	Approval of films specified therein.
	S.O. 878, dated 23rd March, 1963.	Ditto.	Approval of films specified therein.
54	S.O. 879, dated 25th March, 1963.	Ministry of Food & Agriculture.	Directing that stocks and transport of grass, be exercisable n the district of Jhabua of the State of Madhya Pradesh also by the Collector of that district.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

PART II—Section 3—Sub-section (ii)

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

ELECTION COMMISSION, INDIA

New Delhi, the 23rd March 1963

S.O. 949.—In exercise of the powers conferred by sub-section (1) of section 22 of the Representation of the People Act, 1951, the Election Commission hereby makes the following amendment in the Table appended to its notification No. 434/13/61, dated the 23rd December, 1961, namely:—

Against item No. 6, in column 3, for the existing entry No. 5, substitute—

"5 Additional Sub-Divisional Officer, Bilari".

[No. 434/UP/63.]

New Delhi, the 28th March 1963

S.O. 950.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the order pronounced on the 8th March, 1963 by the Election Tribunal Darbhanga, Laheriasarai.

IN THE COURT OF THE ELECTION TRIBUNAL OF DARBHANGA

The 8th day of March, 1963

PRESENT—S. C. Lala, Esqr., M.A.,B.L.,Member.

ELECTION PETITION No. 83 OF 1962

Sri Jugal Kishore Sinha—*Petitioner*

Versus

Sri Nagendra Prasad Yadav—*Respondent.*

For Petitioner—Shri Palat Lal, Pleader.

For Respondent—Shri Ramchandra Prasad, Advocate, Shri Ram Bahadur Ray, Advocate, and Shri Krishna Kant Jha, Advocate.

1. This election petition has been filed under the Representation of the People Act, 1951, for a declaration that the election of the respondent Sri Nagendra Prasad Yadav to the Lok Sabha from the 12 Sitamarhi Parliamentary Constituency is void. The petitioner is Sri Thakur Jugal Kishore Sinha, a defeated candidate.

2. The allegation of the petitioner is that on the date of the election the respondent held in the *benami* of his wife Shrimati Vidyabati Devi, a stage carriage permit No. 190|60 under the North Bihar Regional Transport Authority for plying a bus in Muzaffarpur—Sitamarhi—Sursand route. This, it is contended, was an "office of benefit" under the State Government, and, since the respondent was the real holder of the said office, he was disqualified for being chosen as, and for being, a member of the Lok Sabha under Article 102(1)(a) of the Constitution of India. It is further alleged that, according to the terms of the contract embodied in the permit, mails were also to be carried which was a Union Government undertaking, and, therefore, the respondent who was the real permit holder was disqualified for being chosen as, and for being, a member of the Lok Sabha under Sec. 7(d) of the Representation of the People Act, 1951 as well.

3. The respondent has filed a written statement and contested the petition alleging that his wife was, and has been the real holder of the bus permit in question and he never had, nor has, any concern with the said business or contract. It is also contended that a person who holds such a bus-permit issued by the Regional Transport Authority cannot be said to be holding an "office of profit" under the State Government, nor can such a permit be construed to be a contract entered into with the Government of India for the execution of works undertaken by that Government; and, therefore, even assuming that the respondent was the real permit-holder, he did not incur the disqualification laid down either under Article 102(i)(a) of the Constitution of India or under Sec. 7(d) of the Representation of the People Act, 1951. The submission of the respondent thus is that his election is not void and the petitioner is not entitled to the declaration sought for. A plea has also been taken in the written statement that the election petition is not maintainable.

4. The issues framed are—

(1) Is the election petition maintainable ?

(2) Was the respondent disqualified for being chosen as, and for being, a member of the Lok Sabha under Article 102(1)(a) of the Constitution of India or under Sec. 7(d) of the Representation of the People Act ?

(3) Is the petitioner entitled to the declaration sought for ?

FINDINGS

5. *Issue No.* 2.—This is the main issue in the case. The contention of the petitioner, as already stated, is that the respondent was disqualified for being chosen as and for being, a member of the Lok Sabha under Article 102(i) (a) of the Constitution of India as well as under Sec. 7(d) of the Representation of the People Act 1951, because, at the time of the election, he held, in the *banami* of his wife Shrimati Vidyabati Devi, a permit under the Regional Transport Authority for plying a bus in Muzaffarpur—Sitamarhi—Sursand route. The fact that a permit for plying a bus in Muzaffarpur—Sitamarhi—Sursand route was issued by the Regional Transport Authority in the name of the respondent's wife Shrimati Vidyabati Devi is admitted, but the averment of the petitioner that the respondent was the real holder of the permit and his wife a mere name lender is disputed,

The first question that has to be determined, therefore, is whether the respondent was the real permit-holder and his wife was a mere name lender.

6. It is an established law that the ostensible owner must be taken to be the real owner until the contrary is proved, and there is no presumption that what stands in the name of the wife belongs to the respondent. In the instant case, the permit was applied for by the respondent's wife as evidenced by Ext. 8. It was also issued in the name of the respondent's wife as evidenced by Ext. 4. The agreement relating to the purchase of the bus on hire purchase system (Ext. 9), the receipts showing payments of the instalments (Exts. 19 series), the chalans showing the reposit of permit fees etc. (Exts. 6 series) and in fact all the documents relating to the transaction are in the name of the respondent's wife. Ostensibly, therefore, the respondent's wife is the owner of the bus business, and the onus is on the petitioner to show that the apparent state of affairs is not the real state. It has to be considered whether on the evidence adduced by the petitioner this onus has been satsifactorily discharged.

7. The motive suggested for the alleged *benami* transaction may first be examined. It has been alleged by the petitioner (P.W. 15) both in his petition as also in his evidence that the respondent had applied for Congress ticket for election as M.L.A. in 1952 as well as in 1957, although he did not succeed in obtaining Congress ticket on any of those occasions. This has not been denied by the respondent and must be accepted as correct. The application for permit (Ext. 8) is dated September, 1958 and the contention of the petitioner is that since the respondent was ambitious for election to the State Legislative Assembly ever since 1952, he must obviously have though it fit to take the permit in the name of his wife in order to avoid a possible risk of being disqualified for election in case he succeeded in obtaining Congress ticket in future. Indeed, if the respondent did intend to start a bus business of his own, he may well have reasoned on the above lines. A plausible motive for running the business in *benami* has thus been made out; but the mere existence of a plausible motive is not sufficient to justify the inference that the business is in fact *benami*. The main consideration in such a case must be the source from which the capital of the business was derived, the dealings between the parties and the attendant circumstances.

8. Obviously, the capital of the business consisted mainly of the price paid for the purchase of the bus. The evidence which the petitioner has sought to adduce in this connection is that the respondent's wife had no means of her own and that the money was arranged for by the respondent by raising loans from the Chak Mahila Cane Growners' Co-operative Society, partly in his own name and partly in the names of his relations Ganga Prasad Yadav and Ramsevak Saran Yadav. The entries in the Loan Registers of the Co-operative Society (Exts. 2 series) have been proved in this connection to show that on 3rd December 1959 the respondent and his relations Ganga Prasad Yadav and Ramsevak Saran Yadav took loans from the Society of Rs. 2,200, Rs. 2,800, and Rs. 2,000 respectively. The hire-purchase agreement (Ext. 9) shows that an initial payment of Rs. 8291 and odd was to be made for obtaininy the bus, and out of this amount a sum of Rs. 7000 is said to have been raised by the respondent by taking loans from the Co-operative Society partly in his own name and partly in the names of his relations Ganga Prasad Yadav and Ramsevak Saran Yadav as aforesaid. The fact that on 3rd December 1959 the loans from the Co-operative Society were taken by the respondent as well as his relations Ganga Prasad Yadav and Ramsevak Saran Yadav is admitted, but the averment of the respondent is that the loans were taken by them not for purchase of the bus in question but for payment of a decretal debt which all of them owed to Ramanugrah Raut and others. Evidence has been adduced by the respondent in this connection to show that Ramanugrah Raut and others had not only obtained a decree but also put it in execution. The case was fought upto the Hon'ble High Court, and, during the pendency of the appeal in the High Court, a compromise out of court was arrived at, by virtue of which Rs. 8578/- was to be paid to the decree-holders. Out of this, half was to be paid by the respondent and his brother Sitaram Yadav who are joint, and one-fourth each by the other two *pattidars*, namely Ganga Prasad Yadav and Ramsevak Saran Yadav. It was for the purpose of raising their respective quotas to be paid to the decree-holders Ramanugrah Raut and others that the loans in question are said to have been taken from the Co-operative Society. In support of the above case, the respondent has not only examined himself as R.W. 18 but also Ganga Prasad Yadav (R.W. 8), Ramsevak Saran Yadav (R.W. 11) and Sitaram Yadav (R.W. 14). Documentary evidence has also been adduced to show that a decree had been obtained by Ramanugrah Raut which, on being executed, was fought upto the Hon'ble High Court and then compromised on payment of

CORRIGENDA

New Delhi, the 9th April 1963

S.O. 1118.—In the notification of the Government of India in the Ministry o Labour and Employment, No. S.O. 863, dated the 19th March, 1963, publishec on page 954 in Part II, Section 3, sub-section (ii), of the Gazette of India, datec the 23rd March, 1963,—

in the entries against item I,

(i) in sub-item (d),
for Kendasamudram
read Kondasamudram,

(ii) in sub-item (e),
for Chadukkarai
read Chedukkarai,

(iii) in sub-item (f),
for Mellorapet
read Nellorepet.

[No. F. 13(22)/63-HI.

O. P. TALWAR, Under Secy

New Delhi, the 6th April 1963

S.O. 1119.—In pursuance of the provisions of regulations 23 and 24 of the Metalliferous Mines Regulations, 1961, the Central Government hereby notifies the 30th June, 1965 as the date until which the Board of Mining Examination may grant Manager's, Foreman's, Mate's, Blaster's and Surveyor's certificates referred to in the said regulations.

[No. 1/10/63-MI.

New Delhi, the 11th April 1963

S.O. 1120.—In pursuance of clause (a) of Notification No. S.O. 2361, dated the 23rd July, 1962, of the Government of India, in the Ministry of Labour and Employment, the Central Government hereby approves the [illegible] certificates mentioned in Column I of the table below awarded by [illegible] are specified in the corresponding entry in Column II of the [illegible]

TABLE

Diploma or Certificate awarded	Name of Institution
I	II
1. Diploma in Mining.	State Board of Technical Educa Rajasthan, Jodhpur.
2. Licentiate in Mining Engineering.	Central Board of Technica Examination, Mysore.
3. Diploma in Mining and Mining Surveying.	Madhya Pradesh Board of Technical Education, Bhopal.
4. Diploma in Mining.	Shri Javachamarjendra Occupational Institute, Bangalore.
5. Diploma in Mining Engineering.	State Board of Technical Education and Training, Andhr Pradesh.

Rs. 8478/- out of court which was duly acknowledged by the decree-holders by a recital in the compromise petition, and the case was thereupon disposed of by the Hon'ble High Court in terms of the compromise. Ext. C/1 is the certified copy of decree of the lower court; Ext. C is the certified copy of decree of the Hon'ble High Court which embodies the compromise petition; and Ext. B is the certified copy of order of the Hon'ble High Court accepting the compromise and disposing of the case in terms thereof. In the compromise petition, which forms part of the decree of the Hon'ble High Court, it is clearly stated:

> "That the respondents 1st party have paid Rs. 8578/- (Eight thousand five hundred and seventy-eight) to the appellants in cash outside the court which the appellants have received and they hereby acknowledge the receipt of the same."

This compromise petition was filed on 10th February 1960, that is, only about two months after the loans raised from the Co-operative Society. The oral evidence adduced by the respondent to the effect that the loans were raised by him and his two *pattidars* for payment of the decretal dues of Ramanugarah Raut and others is thus fully supported by documentary evidence and I have absolutely no reason to disbelieve the same. The contrary suggestion of the petitioner that the loans were taken for purchase of the bus cannot for a moment be believed. There was, at the time, an outstanding decree against the respondent as well as his *pattidars* Ganga Prasad Yadav and Ramsevak Saran Yadav which was the subject matter of a litigation in the High Court. The respondent could hardly have thought of purchasing a bus at the time by raising loans. At any rate, it is extremely improbable that Ganga Prasad Yadav and Ramsevak Saran Yadav could be persuaded at the time to raise loans in their names in order to finance the purchase of a bus by the respondent. All of them had, at the moment, a different matter to worry about, *viz.* the payment of the decretal dues of Ramanugrah Raut and others; and as events show, they did compromise the matter with Ramanugrah Raut & others on payment of a cash amount of Rs. 8578/- shortly after the raising of the loans from the Co-operative Society. There is no manner of doubt, therefore, that the loans were raised for the purpose of payment to Ramanugrah Raut & others and not for any other purpose

9. The petitioner has examined P.W. 5, a cultivator and Member of Chak Mahila Co-operative Society to say that the respondent had, in his presence, approached Baldeo Rai, the Secretary of the Society for a loan of Rs. 10000/- but Baldeo Rai said that loan of such an amount could not be given in his name alone and that he should take loans in the names of other persons also. P.W. 5 has purported to say that it was after this that the respondent and his relations Ganga Prasad Yadav and Ramsevak Saran Yadav applied for and took the loans of Rs. 2800/-, Rs. 2200/- and Rs. 2000/- respectively from the Society. He has also averred that the real loanee in all these cases was the respondent. Baldeo Rai, the Secretary of the Co-operative Society is admittedly alive but he has not come to support the story. P.W. 5, who has come to depose about it, is apparently on inimical terms with the respondent, for, he could not deny when questined in cross-examination that litigation started between his great-grand father and the respondent's grand-father in the year as far back as 1886. Being further questioned in cross-examination, he now pretended ignorance of the fact that a litigation was going on between his father and the respondent's uncle Ganga Prasad Yadav which was decided against his father recently on 14th September 1962. He wants us to believe that it was he who recommended to the Secretary of the Co-operative Society for the grant of loan to Nagendra Babu, the respondent, but this is manifestly unbelieveable in view of the strained relationship between his family and Nagendra Babu's family. He also professes to have been present when Nagendra Babu received the loan, but he has apparently lied. Admittedly, all the three loanees executed separate mortgage bonds, with Ramdhyan as surety, and the mortgage bonds executed by Ganga Prasad Yadav and Ramsevak Saran Yadav have also been produced before me and marked Exts. A and A/1 respectively. The evidence of P.W. 5, however, is:

> "Nagendra Babu did not execute any document while taking the loan. I do not remember whether Ramsevak Saran Yadav and Ganga Prasad Yadav executed any document. Ramdhyan did not execute any bond. (Then says) I do not remember if mortgage security bonds were executed by Nagendra Babu, Ramsevak Saran Yadav and Ganga Prasad Yadav before the loans were granted to them. I do not know if the necessity for which the loans were taken by them were recited in the respective mortgage security bonds executed by them."

Apparently, he knows nothing about the loan transaction. In his examination-in-chief he has also purported to say that all the three loans were paid back with interest by Nagendra Babu himself, but in cross-examination he has stated:

> "I learnt about payments of the loans after payments had been made. I cannot say how many days after the payments I came to know of the same. The payments were not made in my presence. I cannot say whether the payments were made in cash or adjustments were made."

No reliance can obviously be placed on the testimony of such a witness.

10. On behalf of the respondent, evidence has been adduced to show that his wife Shrimati Vidyabati Devi had received substantial amounts of cash and ornaments as gifts at the time of her marriage in 1955, only about 3 years before she decided to start a bus business. Her father Jogendra Singh and her *nana* Dhanpat Rai have been examined in this connection as R.Ws. 10 & 13. The evidence of R.W. 10 is that he gifted Rs. 3,000 in cash besides 25 *bharis* of gold to his daughter Vidyabati Devi at the time of her marriage. He has also stated that her *nana* gifted her Rs. 2,000 in cash besides 5 *bharis* of gold, which is substantially corroborated by the evidence of her *nana* (R.W. 13) inasmuch as he has stated that he gave her five gold *muhars* and Rs. 2,000 in cash at the time of her marriage. Vidyabati Devi who has been examined as R.W. 15 has, in this connection, stated that at the time of her marriage she received Rs. 5,000 in cash besides 20 tolas of gold ornaments from her father and Rs. 2,000 in cash and 5 *asharfis* from her *nana*. Thus she has corroborated the evidence of her father and *nana* with regard to the amount of cash and gold gifted to her by her *nana*, though there is a discrepancy between her evidence and the evidence of her father regarding the exact amount of cash and gold gifted to her by her father at the time of her marriage. I do not, however, consider this discrepancy to be a good ground for disbelieving the evidence of her father (R.W. 10). The discrepancy may be due to want of memory on the part of Vidyabati Devi. Besides, a Hindu bride, who has to sit all along in veil during the marriage function, is not expected to know precisely as to what portion was gifted by which particular relation or donor. I have been impressed by the evidence of Vidyabati Devi's father (R.W. 13), and I am inclined to believe what he has deposed. I have been all the more impressed by the evidence of Vidyabati Devi's *nana* (R.W. 13) who has deposed in a very straight-forward manner, and I have no reason to disbelieve his evidence. On their evidence, therefore, I am satisfied that Vidyabati Devi had received substantial cash and gold during her marriage, only about 3 years before the date of the application made by her for the bus permit. It is natural to suppose, therefore, that she had some money to spare for the purchase of the bus. She, however, still needed Rs. 5,000, and evidence has been adduced to show that she raised this amount by taking loan from her *nana* (R.W. 13). The evidence of Vidyabati Devi (R.W. 15) coupled with the evidence of her father (R.W. 10) and *nana* (R.W. 13) proves this. It is stated in this connection that Vidyabati Devi first approached her father in this behalf. Her father could not advance the sum, but he took her to her *nana* who advanced the loan of Rs. 5,000 as required by her. It may be noted here that her *nana* (R.W. 13), who is a resident of Monghyr district, is a man of substantial means. He has extensive cultivation and he professes to pay considerable amounts as Agricultural Income-Tax, a fact which the petitioner (P.W. 15) has not been able to deny although admittedly he sent a messenger (Debnarain Jha of Narha) to Monghyr to enquire whether Agricultural Income-Tax was really being paid by Vidyabati Devi's *nanihal* family. It cannot be doubted, therefore, that Vidyabati Devi's *nana* had the means to advance the loan of Rs. 5,000 when Vidyabati Devi with her father approached him. The evidence of Vidyabati Devi's father (R.W. 10) and *nana* (R.W. 13) also shows that Vidyabati lived at her nana's place for several periods and she even prosecuted her studies there for some time. It is no wonder, therefore, that there was some attachment between her and her *nana*, on account of which her *nana* readily obliged her with the loan when required. The petitioner has sought to adduce evidence to the effect that Vidyabati never lived in or received any money from her *nanihal*, but the nature of the evidence adduced is so unsatisfactory that it cannot for a moment be believed. Thus, for example, P.W. 12 has been made to say that Vidyabati Devi never lived in or received any money from her *nanihal* but in cross-examination he has stated:

> "I was not an invitee on the occasion of Vidyabati Devi's marriage or birth... ...I cannot say whether or not she ever went to her *nanihal*. I have never been to her *nanihal*. I have not seen the documents of property of her *nanihal*.....I have never made any

enquiries as to what payments were received by Vidyabati Devi from her nanihal."

Obvlously, no reliance can be placed on such evidence.

11. Evidence has also been led by the petitioner to the effect that some of the instalments for the bus (which was obtained on hire purchase system) were arranged for by the respondent by taking loans from Tarkeshwar Singh of Ramdauli. P.W. 12, a cultivator of Bishanpur has been examined in this connection to say that in December, 1961, the respondent had approached Tarkeshwar Babu for a loan of Rs. 4,000 or Rs. 5,000 saying that the money was required for payment of the price of bus. A cheque for Rs. 3,600 is said to have been given by Tarkeshwar Babu that day on execution of a handnote by the respondent for Rs. 6,000. Later, in April, 1962, Tarkeshwar Babu is said to have given another cheque of Rs. 1,800 to the respondent in presence of P.W. 12. The evidence is, however, unreliable. It is not understood why the respondent would execute a handnote for Rs. 6,000 without receipt of the full consideration Besides, Tarkeshwar Babu is not coming to support the story. Cheques are said to have been issued by Tarkeshwar Babu but the witness (P.W. 12) cannot say whether they were crossed cheques or bearer cheques and whether they related to current account or Savings Bank account. He cannot even say on which Bank they were drawn. As for the handnote said to have been executed by the respondent, the witness does not remember as to who scribed it, what amount of stamp was affixed or what the contents were. He does not even remember whether anybody attested it as witness. I have not been impressed by his evidence and it seems to us that the entire story given by him is a concoction.

12. On the evidence, which I have already discussed above, there is no manner of doubt that the initial money required for the purchase of the bus on hire purchase agreement was arranged for and paid by Vidyabati Devi partly out of gifts received by her at the time of her marriage and partly by raising loan from her *nana*. As for the subsequent instalments, they must obviously have been paid out of the income of the bus business, and, at any rate, the petitioner has signally failed to adduce any reliable evidence to the country. It must, therefore, be held that the capital of the business was derived from Vidyabati Devi and not the respondent, and this strongly refutes the petitioner's suggestion that the business was being run by the respondent in the *benami* of Vidyabati Devi.

13. The dealings between the parties and the attendant circumstances may now be examined. In this connection evidence has been adduced by the petitioner to show in the first place that the respondent has been forging the signatures of Vidyabati Devi on papers relating to the bus business. The evidence is, however, most unsatisfactory. Thus P.W. 8 has been examined to say in his examination-in-chief that the signature "Bidyabati Devi" (Ext. 8) appearing in the application for permit (Ext. 8/a) is in the pen of Nagendra Babu, the respondent; but in cross-examination the witness had to admit that he does not know the signature of Vidyabati Devi and it is by guess that he has stated that the signature (Ext. 8) is in the pen of Nagendra Babu. P.W. 11 has then been made to say that the petition (Ext. 11) including the signature of Vidyabati Devi thereon is in the pen of Nagendra Babu, the respondent; but in cross-examination he has stated that the petition (Ext. 11) *excepting the signature of Vidyabati Devi and the date under it* is in the handwriting of Nagendra Babu, and he cannot identify the signature of Vidyabati Devi and the date under it appearing in Ext. 11. P.W. 13 has also been made to say that Ext. 11 is entirely in the pen of Nagendra Babu, but it is admitted by him in cross-examination that he had never any correspondence with Nagendra Babu, nor did Nagendra Babu ever execute any document in his presence. He also never had any correspondence with Vidyabati Devi, nor did she execute any document in his presence, and he does not know the writing of Vidyabati Devi. Evidently, no reliance can be placed on such evidence.

14. Evidence has then been adduced by the petitioner to the effect that the respondent has been making oral assertions here and there about the bus business being his, but in this respect also the evidence is of an unreliable character. Thus, P.W. 9 has been examined to say that on the last Ramnavami day, when he was travelling as a passenger on the bus in question (Rajhans bus No. B.R.F. 2126) Nagendra Babu boarded the bus at Runi Syedpur whereupon the driver informed him that there was a checking ahead. Upon this, Nagendra Babu is said to have replied: "Proceed ahead. Who does not know my bus?" The witness, however, has not impressed me to be a truthful man. The suggestion of the respondent is that he has come to depose under the influence of one Dwarka Lal under whom he and his brother Satnarain Kahar work; and, when

cross-examined on the point, he has prevoricated as will appear from the following extract of his deposition:

> "Satuarain Kahar is my brother. (volunteers). He is separate from me. He works as driver and conductor. I cannot say if he is a servant under Dwarka Lal. I have never worked under Dwarka Lal in any capacity. I do not remember if I have ever deposed in his favour. I do not remember how many times I have deposed in court as a witness."

P.W. 11 has also been examined to say that on that day, when buses were being checked at Sitamarhi, he enquired from Nagendra Babu whether his bus was also being checked. To this, Nagendra Babu is said to have given an affirmative reply and added that the checking staff were checking the bus knowing that it was his bus. This witness, who is a discharged Home Guard at present working as a pleader's clerk, has purported to say that that day he had gone with his employer pleader Sri Udit Narain Purbey to the house of Sri Sheonandan Prasad, Pleader, for consultation in connection with some case. The consultation was going on at the house of Sheonandan Babu, Pleader, when, on hearing halla, he left his employer pleader to continue the consultation with Sheonandan Babu and came to the place of checking. After the checking, he returned back to Sheonandan Babu's house and began to show to Sheonandan Babu the relevant papers of the case for consultation. Apparently, however, it is unlikely that he would leave the place of consultation like that and go to witness the checking with which he was not in the least concerned. Incidentally, he is the same witness who asserted in his examination-in-chief that the entire petition (Ext. 11) including the signature of Vidyabati Devi thereon was in the handwriting of Nagendra Babu and then retracted it in cross-examination by saying that he could not identify the signature of Vidyabati Devi and the date under it appearing in Ext. 11. Apparently, he is an unreliable witness. There is then the evidence of P.W. 13 who has stated that he had taken a loan of Rs. 100 from Nagendra Babu, and, in the second week of September, 1958 Nagendra Babu demanded back this money from him saying that he was in need of money for taking a bus permit. He has further stated that a bus was later purchased by Nagendra Babu and on being questioned Nagendra Babu told him that he had arranged for the price of the bus by taking loan from the Co-operative Society. The witness, however, seems to be a liar, because, as already discussed above, there is no manner of doubt that the loan was taken for payment of the decretal dues of Ramanugrah Raut and others and not for the purchase of any bus. I have also discussed the evidence of this witness in connection with Ext. 11 which will show the unreliable character of his testimony. P.W. 14 has next been examined to say that, on the 15th September, 1958, when he was travelling on a bus, he had a talk with Nagendra Babu in course of which the latter told him that he was going to Muzaffarpur to apply for a bus permit. Later, it is said, Nagendra Babu also told him that he had taken permit in the name of his wife as he would have to stand as a candidate for election to the Legislative Assembly. This witness also appears to me to be a liar. The chalan (Ext. 6) by which the initial deposit for application for permit was made as well as the chalan (Exts. 6/a to 6/d) by which the subsequent deposits of renewal fee and transfer fee were made may here be referred to. Although the tenderer in Exts. 6/a to 6/d was Nagendra Babu on behalf of Vidyabati Devi, the tenderer in Ext. 6 by which the faitial deposit for the application for permit was made was "Bidaya Bati Devi" herself. The oral evidence adduced on behalf of the respondent also shows that Vidyabati Devi personally went to make the deposit along with a relation Shyam Saran Prasad Yadav (R.W. 17) who was later appointed by Vidyabati Devi as a paid servant to look after the bus business on her behalf. The story of P.W. 14 that on 15th September, 1958, Nagendra Babu was alone going to Muzaffarpur to deposit money for the application for bus permit thus appears to be a concoction. His story that on a subsequent date Nagendra Babu told him that he had obtained the permit in the name of his wife as he would have to stand as a candidate for election to the Legislative Assembly is also a concoction, because in cross-examination he has stated:

> "I had never any talk with Nagendra Babu after the 15th September, 1958. The only talk I had with him was on the bus on the 15th September, 1958."

It would thus appear that there is no reliable evidence on behalf of the petitioner to show that the respondent ever asserted the bus business to be his. Even if it is assumed for a moment that he was running the business in the benami of his wife in order to avoid a possible risk of being disqualified for election, it is improbable that he would go on talking every men he met that he was the real owner of the business.

15. It is then alleged by the petitioner that on the occasion of the general checking of buses on the last Ramnavami day, the respondent went so far as to approach the Magistrate and the checking staff to stop checking, simply because the bus in question (viz. Rajhans bus No. B.R.F. 2126) was one of the buses, which had been stopped for checking. The fact that there was a general checking of buses on the Ramnavami day is not denied; and it appears that after the bus in question had been checked a prosecution report (Ext. 1) was submitted by the Enforcement Officer (P.W. 2) whereupon a spot trial was held by the Magistrate (P.W. 1) who sentenced the driver and the conductor to a fine of Rs. 25 each. The fact that the respondent approached the checking staff with a request to stop the checking is admitted; but the averment of the respondent (R.W. 18), which is supported by the evidence of R.Ws. 7 & 9, is that he did so not because Rajhans bus was being checked but because a large number of buses had been detained during the mela time, as a result of which passengers were being inconvenienced. The Magistrate (P.W. 1) and the Enforcement Officer (P.W. 2) have also stated that the respondent spoke about buses in general and not about any particular bus. The stand taken by the respondent was that due to rush of people on account of Ramnavami mela, over-loading in buses was natural and so there should be no checking during the mela period unless the number of buses was increased. It is possible that in making the request, he had the interest of Rajhans bus also in his mind, but it cannot be inferred therefrom that he and not his wife was the owner of Rajhans bus. I cannot accept the argument that he would be concerned about Rajhans bus only if it belonged to him and not if it belonged to his wife. Even assuming, therefore, that his conduct in requesting the checking staff to stop checking was motivated partly or wholly by a desire to protect Rajhans bus, it cannot be inferred that he and not his wife was the owner of the bus. Such a conduct would be equally consistent with the position that his wife was the owner.

16. The petitioner has made much of a cutting which appears to the original petition (Ext. 11). By this petition, Vidyapati Devi purported to authorise the respondent to receive the bus permit on her behalf, but the words *"is bus ka dekh bhal bhi Nagendra Prasad hi karenge"* have been penned through. The averment of the respondent (R.W. 18) is that these words were penned through by Vidyabati Devi herself when she gave the petition to him for being taken to the Regional Transport Authority. On behalf of the petitioner, however, it is suggested that the respondent must have penned through these words when inspecting the document in the office of the R.T.A. during the pendency of this election petition. A certified copy of the document which was obtained by the petitioner on 2nd March, 1962, (Ext. 21) has been produced in this connection to show that these words were there when the certified copy was taken. The contention on behalf of the respondent, on the other hand, is that the petitioner must have got the cut portion also written in the certified copy in order to show the respondent in bad light. In this connection the evidence of P.W. 6, as Assistant working in the office of the R.T.A. may here be referred to. He has stated that when a copy is compared, it is done with the help of two persons. One holds the original and reads it out. The other holds the copy and compares it with reference to the contents as read out by the first mentioned person. In the instant case, the copy (Ext. 21) was compared with the help of P.W. 6 and another Assistant. The other Assistant was holding the original and reading it out, while P.W. 6 was holding the copy. P.W. 6 cannot, therefore, say whether there was any cutting in Ext. 11 when it was filed. The presumption, of course, is that the certified copy was correctly prepared; but be that as it may, the respondent's case would not be weakened by the fact that there was no cutting in the petition when it was filed. If we take it that the cutting was not there when the petition was filed, it would mean that Vidyabati Devi had given authority to the respondent not merely to receive the bus permit but also to look after the bus generally; and so, if the respondent was looking after the bus, it was because of an express authority given to him by Vidyabati Devi in writing. Obviously, this would strengthen the respondent's case instead of weakening it. The petitioner's case would not be improved by it.

17. The rest of the evidence adduced by the petitioner does not stand much scrutiny. P.W. 8 has been examined to say that Rs. 8,300 was paid by the respondent to Tarkeshwar Babu in his presence. The suggestion is that since Tarkeshwar Babu was the guarantor in the hire purchase agreement, the above sum was paid by the respondent to him. The evidence of P.W. 8 (which I have already discussed in connection with Ext. 8) has not, however, impressed me as reliable. Besides, the fact that payment to Tarkeshwar Babu was made through the hands of the respondent does not prove Vidyabati Devi was not the real purchaser of the bus. What is really important is the source from which the

money was derived, and, as I have already shown, the source was Vidyabati Devi and not the respondent. P.W. 10 has then been examined to say that the respondent, who was the owner of the bus, not only used to issue bus tickets but also used to take accounts of the bus fares from the conductor and out of the money realised, he used to make payment to one Hiralal Sah, a hotel keeper for feeding his election workers on credit. In cross-examination, however, the witness has stated that he cannot say what the respondent used to do with the money realised. Hiralal Sah: who has been examined as R.W. 16, has also denied the fact that the election workers of the respondent used to be fed at his hotel on credit. In the circumstances, I am not prepared to believe P.W. 10. A true copy of Post Office Savings Bank journal (Ext. 20) has then been produced to show that an account on the Post Office Savings Bank was opened in the name of Vidyabati Devi with the respondent as "agent", but this hardly proves that the bus business did not belong to Vidyabati Devi. Other documents filed on behalf of the petitioner also do not show that Vidyabati Devi was not the real owner of the bus business. All that they purport to show is that at times the respondent used to look after the business and act on behalf of Vidyabati Devi. The respondent being the husband of Vidyabati Devi, this is neither unusual nor inconsistent with the position that the real owner of the bus business was Vidyabati Devi.

18. Considering the evidence discussed above, therefore, I find that the petitioner has failed to prove that the respondent was the real holder of the permit or that he was running the bus business in the *benami* of his wife Vidyabati Devi. The oral evidence of the P.Ws. in this respect is unreliable and the documentary evidence adduced by the petitioner is not inconsistent with the position that the real owner was Vidyabati Devi. On the other hand, the evidence adduced by the respondent shows that the capital of the business was derived from Vidyabati Devi, and the respondent did nothing more than to look after the business for and on behalf of his wife at times. Even assuming, therefore, that this was an "office of profit" under the Government within the meaning of Article 102(i)(a) of the Constitution of India or a subsisting contract for execution of any work undertaken by the Government of India within the meaning of Sec. 7(d) of the Representation of the People Act, the respondent cannot be held to have been disqualified for being chosen as, and for being, a member of the Lok Sabha under either of these provisions.

19. Even if it is assumed, however, that the real holder of the permit and the real person to run the bus business was the respondent, it cannot, I think, be said that he incurred the disqualification laid down in Article 102(i)(a) of the Constitution of India or Section 7(d) of the Representation of the people Act, The provision contained in Section 7(d) of the Representation of the People Act, 1951 may first be examined in this connection. The present clause (d) of section 7 was substituted by the Amending Act 58 of 1958. Before that, the clause read thus:

> (d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods, to, or for the execution of works or the performance of any services undertaken by, the appropriate Government".

The above was the condition for disqualification under clause (d) before the Amending Act 58 of 1958. By the Amending Act 58 of 1958, the following clause was substituted for the old clause (d):

> "(d) if there subsists a contract entered in the course of his trade or business by him with the appropriate Government for the supply of goods to, or for the execution of works undertaken by, that Government".

In the instant case an election to the Lok Sabha being in question, the "appropriate Government" is the Union Government or the Government of India, and the contention of the petitioner is that since the permit contains a term for carrying of mail bags, which is a Union Government undertaking, the provision of Section 7(d) is attracted. The contention on behalf of the respondent, however, is that a term for carrying mail bags may be a contract for the "performance of any services" undertaken by the Union Government but not a contract "for the execution of works" undertaken by that Government. Under clause (d) of Section 7 as it stood before the Amending Act 58 of 1958, therefore, disqualification might have been incurred on that account, but the words "the performance of any services" appearing in the old clause (d) do not find place in the new

clause (d) and therefore, under the existing provision which came into force before the present election, no such disqualification is incurred. The ruling reported in A.I.R. 1955 Supreme Court, p. 459 which was a case under the old clause (d) may here be referred to. It was observed by their Lordships in that case that a contract entered into by a permit holder of a motor bus with the Government in the Postal Department to carry mail bags and postal articles was a contract for the performance of a "service" undertaken by the Government of India. This obviously disqualified the permit holder under clause (d) *as it then existed*. But under the existing clause (d) the words "the performance of any services" are absent and, therefore, there is no disqualification on that account as rightly contended on behalf of the respondent. Under the existing clause (d), which as already stated came into force before the present election, a person would be disqualified only if he has a subsisting contract for supply of goods to, or for the execution of works undertaken by, the appropriate Government. A permit to ply a bus is not a contract for supply of goods. Nor is it a contract for the execution of works because "works" in clause (d) connotes something to be built or constructed and not something to be done (*vide* 7 E.L.R. 416). The learned Advocate for the petitioner has also conceded this at the time of arguments. I hold accordingly that even assuming that the respondent was the real permit-holder and the real owner of the bus business, he did not incur any disqualification under Section 7(d) of the Representation of the People Act, 1951, as amended by Act 58 of 1958 which came into force before the present election.

20. The disqualification laid down in Article 102(i)(a) of the Constitution of India also does not apply in the present case. Under it a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any "office of profit" under the Government of India or the Government of any State other than an office declared by the Parliament by law not to disqualify its holder. The crucial point for determination is whether the person who holds a permit to ply a bus holds an "office of profit" under the Government within the meaning of the said Article. The expression "office of profit" has not been defined in the Constitution nor in the Representation of the People Act, 1951. It is manifest, however, that in order to disqualify a person under Article 102(i)(a) of the Constitution of India it has to be proved in the first place that what he holds was an "office" under the Government. The element of "profit" is by itself not enough. In other words, for an "office of profit" there must be an "office" first. In my opinion, a person who holds a permit to ply a bus cannot be said to be the holder of an "office" under the Government. Several case-laws have been cited before me on both sides, but none of them deals directly with the question whether a permit holder for plying a bus holds an "office" under Government or not. In the Supreme Court decision cited above (A.I.R. 1955 Supreme Court, 459) disqualification of a permit-holder of a motor bus, who had a contract with the Postal Department to carry mail bags and postal articles, was considered under Sec. 7(d) of the Representation of the People Act as it then stood, and not under Article 102(i)(a) of the Constitution of India. The election in that case was not even challenged on the ground that the permit-holder held an "office of profit" under the Government. Obviously, such a permit-holder cannot be said to be the holder of an "office" under the Government. His position is akin to that of a licensee for sale of liquor or arms or a permit-holder for sale of controlled rations and it is, I think, too much to say that every such individual holds an "office" under the Government.

21. It is also contended by the learned Advocate for the respondent that the essential characteristic of an "office" under the Government is that it cannot be held in *benami*. Since a permit for plying a bus can be held in *benami*, the holder of such a permit, it is urged, cannot be said to hold an "office" under Government. It is then pointed out that under Sec. 59(i) of the Motor Vehicles Act, read with rule 66 of the Bihar Motor Vehicles Rules, 1940, a permit can be transferred with the permission of the Regional Transport Authority. It is contended that the transference of an "office" under the Government, even with the permission of a statutory body like the Regional Transport Authority, is inconceivable and, therefore, a permit-holder of a bus cannot be said to be the holder of an "office" under the Government. The contentions are, to my mind, not without considerable force.

22. The learned Advocate for the respondent has further contended that even if the holder of a bus permit is held to be an office of profit, it cannot be said that it is an office of profit *under* the Government of India or the Government of any State, in as much as the permit is issued by the Regional Transport Authority which is a statutory body of officials as well as non-officials appointed under Sec. 44(2) of the Motor Vehicles Act. In this connection reliance is placed on A.I.R.

1958 S.C. 52 where it was held that a person holding an appointment under a statutory body, such as, the Committee of the Durgah Endowment, cannot be said to be holding an appointment under the Government of India, though the Committee or the members of the Committee are removable by the Government of India. On the principle laid down in this ruling, the contention of the learned Advocate for the respondent must, I think, be accepted.

23. For the reasons discussed above, a person who holds a bus permit or runs a bus business under the Regional Transport Authority cannot be said to be the holder of an office of profit under the Government. Even assuming, therefore, that the respondent was the real holder of the bus permit and the real owner of the bus business, he cannot be said to have incurred the disqualification laid down in Article 102(i)(a) of the Constitution of India.

24. To conclude, I hold that the respondent was never the real or ostensible permit-holder of the bus nor the real or ostensible owner of the bus business in question. I further hold that neither under Sec. 7(d) of the Representation of the People Act, 1951, nor under Article 102(i)(a) of the Constitution of India was he disqualified for being chosen as, and for being, a member of the Lok Sabha, and this is irrespective of the fact whether the real permit-holder and the real owner of the bus business in question was the respondent or his wife. The issue under discussion is thus decided in favour of the respondent.

25. *Issues Nos.* 1 & 3.—There is nothing technically wrong in the maintainability of the Election Petition, but it fails on merits in view of my findings on issue No. 2 above, and I hold accordingly that the petitioner is not entitled to the declaration sought for.

26. In the result, therefore, the petition is dismissed. The petitioner shall pay Rs. 200/- (Two hundred) only as cost to the respondent.

Dictated & corrected by me.

Sd. S. C. Lala,
Member,
Election Tribunal,
Dharbhanga,
8-3-63.

Sd. S. C. LALA.
Member,
Election Tribunal,
8-3-63
Darbhanga,

[No. 82/83/62.]

By order,

PRAKASH NARAIN, Secy.

New Delhi, the 25th March 1963.

S.O. 951.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the order pronounced on the 2nd March, 1963, by the Election Tribunal, Lucknow.

IN THE COURT OF THE ELECTION TRIBUNAL LUCKNOW.

PRESENT:

Sri S. Malik, Member, Election Tribunal, Lucknow.

ELECTION PETITION No. 74 OF 1962

Kidwai Husain Kamil—*Petitioner.*

Versus.

Yadav Ram Sewak and others—*Respondents.*

JUDGMENT

This is a petition under the Representation of the People Act (Act No. 43 of 1951) filed by Kidwai Hussain Kamil challenging the election of the contesting

respondent Yadav Ram Sewak, who was declared elected to the House of People from Constituency No. 30, Bara Banki Parliamentary Constituency during the last General Elections held in February, 1962. Five candidates contested the elections and the votes polled by each were as follows:—

1. Yadav Ram Sewak..... Respdt. No. 1..... 76545 (Socialist)
2. Kidwai Husain Kamil.....Petitioner..... 76224 (Congress)
3. Sri-Krishna Das.....Respdt. No. 2..... 38602 (Jan Sangh)
4. Krishna Behari..... .....Respdt. No. 3..... 18971 (Swatantra Party)
5. Autar..... .....Respdt. No. 4 ..... 13134 (Communist)

Only respondent no. 1 contested the petition.

In view of the allegations made in the petition, which were controverted by respondent No. 1 in his written statement, the following issues were framed:—

1. Whether there was improper reception, refusal or rejection of votes at the time of counting and if so, whether the result of the election was materially affected due to the same?

2. Is there any discrepancy between the total number of votes mentioned in Form No. 16 and Form No. 20 as alleged in paragraph 6(C) and (D)? If so, its effect

3. Whether the tendered votes were wrongly rejected by the Returning Officer and if so, was the result of the election materially affected due to the same?

4—Whether at the polling station No. 29 Majgawan in Bhitauli Unit and Khursi Polling Station in Khursi Assembly Unit the Polling officers did not give ballot papers to the voters as mentioned in paragraph 10 of the petition? If so, its effect?

5—Whether counting of votes of Bhitaule Assembly Unit went up to 8-30 p.m. in the night and after 5-30 p.m. it was done in failing and insufficient light inspite of protests as alleged in paragraph 11 of the petition? If so, its effect?

6—Whether the petitioner received a majority of valid votes and is entitled to be declared duly elected?

FINDINGS

It may be mentioned here that from the very outset the petitioner has been claiming an inspection of the ballot papers. The first application was moved by the petitioner on August 8, 1962 under Section 92(a) of the Representation of the People Act. It was vehemently opposed by respondent No. 1. After hearing the parties at length, the application for inspection filed by the petitioner was rejected by the Tribunal by its order dated 25th August 1962. After the issues were framed on 16th November 1962, the petitioner again moved an application praying that his prayer for inspection of ballot papers be reconsidered by the Tribunal and that in case that be not done, the Tribunal should itself make a scrutiny to find out the alleged mistakes regarding counting, reception, rejection and refusal of votes by the Returning Officer. Thereafter on 26th November 1962 the petitioner with his counsel made the following statement:—

> "In this election petition, the petitioner does not want to produce any evidence except the documents already filed and prayer for inspection and scrutiny."

In view of the statement made by the petitioner, the contesting respondent also did not want to adduce any oral evidence and made a prayer that the petition be rejected as the petitioner could bring to the notice of the Tribunal no fresh fact which might justify the Tribunal's revising its previous order rejecting the prayer of the petitioner for the inspection of ballot papers and that the question of scrutiny also did not arise. Both parties, besides arguing the case at length, filed written arguments. The

learned counsel for the petitioner during final arguments sought to tender in evidence all the ballot papers, which are lying in sealed bundles in the *Malkhana* of the Court, as they were summoned from the Returning Officer at the very outset on an oral prayer made by the petitioner that they be summoned and kept in readiness so that in case the Tribunal granted the petitioner's prayer for inspection, there may be no loss of time in summoning the ballot papers.

As conceded by the petitioner himself in his written arguments, as the petitioner has not adduced any evidence to substantiate issues Nos. 3, 4 and 5, the burden of proving which lay on him, the said issues are hereby decided against the petitioner and in favour of the respondent No. 1.

The only issues which now remain are issues Nos. 1, 2 and 6. Out of these issues, issue No. 2 may be taken up first.

Issue No. 2

Both parties filed certified copies of forms Nos. 16 and 20 and while the copies filed by the petitioner show the discrepancy mentioned in paragraph 6(C) and (D) of the petition, the copies filed by the contesting respondent show that there is no such discrepancy. Under the circumstances, the burden was on the petitioner to prove by summoning the original that his copies are correct while the certified copies filed by the respondent No. 1 are incorrect. As this was not done, there is nothing before the Tribunal to show that the allegations made by the petitioner regarding these forms in paragraph 6(C) and (D) are correct. As the petitioner has failed to prove these allegations, Issue No. 2 also has to be decided against him.

Issues Nos. 1 and 6 are inter-related and may be taken up together. As the petitioner has not adduced any evidence to show that there really was improper reception, refusal or rejection of votes, or mistakes were committed in counting of votes, there is nothing on the record which might go to substantiate any of these allegations. Realising this, the petitioner has repeated his prayer for allowing inspection of the ballot papers and the learned counsel for the petitioner has argued that it is incumbent on the Tribunal, in case it decides not to allow inspection, to make a scrutiny of the ballot papers itself in view of the observations made by the Hon'ble High Court of Allahabad in the case of Laxmi Shankar Yadav *Vs.* Kunwar Sripal Singh and others reported in 22 E.L.R. at page 47. This contention has been controverted by the learned counsel for the respondent as is apparent from the written arguments submitted by him on behalf of the respondent.

The question as to whether the petitioner should be allowed to make the inspection prayed for has already been considered after hearing the parties at length by the Tribunal as will appear from its order dated 25th August 1962. It may be pointed out that Rule 93 of the Conduct of the Election Rules 1961 is the same as old Rule 138 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1956 and by mistake in the order dated 25th August 1962 Rule 93 has been wrongly mentioned as Rule 138. It would serve no purpose in repeating the reasons given by the Tribunal in the said order for rejecting the petitioner's application for inspection. In short, however, it may be pointed out that the Tribunal for reasons enumerated in the said order is of the opinion that Rule 93 makes it clear that inspection of ballot papers cannot be claimed by any party as of right and that it should be allowed by the Tribunal only if it appears necessary in the interest of justice. In other words, before allowing inspection of ballot papers, the Tribunal must consider whether facts have been brought to its notice which make out a *prima facie* case showing that mistakes were committed during counting, reception, refusal or rejection of votes at the time of counting. Inspection of ballot papers can be done only under the orders of a Tribunal or Court. If the Legislature's intention was to allow inspection easily, this restriction would not have been imposed and inspection would have been allowed either as a matter of right. A perusal of the Rule leaves no doubt that inspection should ordinarily be refused unless the Tribunal finds that it should be allowed in the interest of justice. It is apparent that the Legislature framed Rule 93 with the object of not allowing inspection to enable a candidate to fish out or collect material for filing a petition or to have a scrutiny to satisfy himself that mistakes materially affecting the election were not committed at the time of counting. The position has not changed since the previous order dated 25th August 1962 was passed by the Tribunal in this case and nothing has been brought to the notice of the tribunal since that order was passed justifying a revision of that order by the Tribunal. Some cases decided by the Hon'ble the Supreme Court were cited by the learned counsel for the petitioner, but in none of those, the question as to under what circumstances inspection of ballot papers should be allowed by the Tribunal was involved and not

a single case decided by the Supreme Court could be brought to the notice of the Tribunal in which this question might have been considered. The Hon'ble the Supreme Court merely held that after inspection has been allowed, and the petitioner has found out mistakes regarding reception, rejection or counting of votes, the Tribunal must allow necessary amendment of the petition enabling the petitioner to incorporate in the petition the mistakes discovered as a result of the inspection, because obviously the said mistakes could not have been within the knowledge of the petitioner when the petition was filed or before the inspection was made. From this it could not be concluded that inspection should be allowed to be made when prayed for by a petitioner to enable him to find out if mistakes were committed materially affecting the result of the election. It may be repeated that there is nothing on the record which may raise a reasonable doubt in the mind of the Tribunal that mistakes were committed during counting resulting in improper reception, refusal of rejection of votes. Counting was done under the direct supervision of a Returning Officer, a responsible government servant. Counting of ballot papers or votes and reception and rejection of ballot papers or votes was thus an official act done by a public servant. Hence it should be presumed that the official act was duly and properly done. Nothing has been brought to the notice of the Tribunal which may rebut this presumption.

It was argued on behalf of the petitioner that Rule 93 of the Conduct of the Election Rules 1961 does not apply to this case, as the ballot papers are no more in the custody of the Returning Officer and in view of the fact that the petitioner has tendered that ballot papers before the Tribunal in evidence. There is not force in this contention. The ballot papers were summoned on an oral request made by the petitioner so that in case the Tribunal considered it necessary to allow the inspection prayed for, no time was lost in then summoning the papers. The ballot papers are not in the custody of the petitioner and the petitioner cannot in theory tender the ballot papers in evidence. The ballot papers sought to be tendered during the time allowed for tendering documents. Moreover, the petitioner with his counsel on 26th November 1962 made a specific statement that he had no evidence to produce except the documents *already* filed. Under the circumstances, there was no question of tendering the ballot papers on the last date, *i.e.* on 17th December 1962.

Even though the ballot papers are at present in the custody of the Tribunal lying in sealed boxes as sent by the Returning Officer in the *Malkhana*, no provision could be brought to my notice under which the inspection prayed for could be allowed. The provisions for inspection in the C.P.C. do not apply to this case, as already discussed by the Tribunal in its order dated 25th August 1962. Moreover, Rule 93 could not be shut out and it is apparent that ballot papers as well as the other documents mentioned in Rule 93 or in the nature of privileged documents the inspection of which should not ordinarily be allowed by the Tribunal unless a *prima facie* case was made out, or it appeared to the Tribunal that inspection should be allowed in the interest of justice.

A novel argument was put forward that Rule 93 does not apply to Election Petitions in view of the title. "The Conduct of Election Rules" which shows that the rules including Rule 93 have been framed only in relation to the conduct of the elections. There is no force in this contention also. As will appear from Rule 1, the title is only a short title given to the Rules. The word, "Short" makes it clear that it is not a comprehensive title and therefore, it should not be interpreted literally or very strictly. Moreover, a perusal of Rule 93, specially the words, "Shall not be opened and their contents shall not be inspected except under the order of a competent Court or Tribunal" make it clear that these rules apply to the trial of the election petitions also. Rule 93 clearly shows that it lays down under what circumstances inspection could be allowed after the elections are over while the documents mentioned in Rule 93 are lying in the custody of the Returning Officer, *i.e.* it deals with the stage after the elections are over. The word "Tribunal" also shows that Rule 93 deals with the stage when Election Tribunal have come into existence. Moreover, in interpreting statutory Rules like this, much importance could not be attached merely to the title specially when the title has been described as a short title.

The only question which remains to be considered is whether it is incumbent on the Tribunal to make a scrutiny of the ballot papers in view of the allegations made in the petition whatever may be the nature of allegations made in a petition, the allegations themselves under no provision of law could make it incumbent for the Election Tribunal to make a scrutiny of the ballot papers even though the petitioner has not proved those allegations. The learned counsel for the petitioner cited before the Tribunal the observations made by the Hon'ble High Court in Laxmi Shankar Yadav *vs.* Kunwar Sripal Singh and others (22 E.L.R. page 47). A

perusal of the observations made by the Hon'ble High Court in that case will show that the Hon'ble High Court held that if a tribunal comes to the conclusion that mistakes were committed during counting due to improper reception, rejection or refusal of votes before granting a relief under Section 101 of the Representation of the People Act, the Tribunal shall make a complete scrutiny of the ballot papers and find out the actual number of votes polled by each candidate. The reason is obvious. If the Returning Officer was found to have made mistakes in respect of the petitioner or the returned candidate, it is possible that similar mistakes were committed in respect of other candidates also. Under the circumstances, unless the extent of the mistakes that may have been committed in respect of each candidate was found out by a careful scrutiny, it could not be said which candidate actually received how many votes. Before giving a relief under Section 101 therefore it was incumbent on the part of the Tribunal to make a scrutiny to find out which candidate received the majority of votes and could be declared to have been duly elected. Therefore, the petitioner's contention that if the inspection prayed for is rejected, the Tribunal must make a scrutiny itself, has no force.

In view of the reasons discussed, it is apparent that the petitioner has failed to prove any fact justifying allowing an inspection of the ballot papers and there is nothing on the record to show that the respondent No. 1 was wrongly declared to have been elected. Issues Nos. 1 and 6, therefore, are decided against the petitioner.

In view of the reasons discussed, the petition is hereby rejected. The respondent No. 1 shall be paid Rs. 1000/- (one thousand) as costs out of the security money deposited by the petitioner. The Election Commission be informed about this order by telegram and a copy of this order be sent to the Election Commission forthwith.

(Sd.) S. MALIK, Member,

Election Tribunal, Lucknow.
March 2, 1963.

[No. 82/74/62.]

New Delhi, the 28th March 1963

S.O. 952.—It is hereby notified for general information that the disqualification under clause (c) of section 7 of the Representation of the People Act, 1951, incurred by the person whose name and address are given below, has been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section of the said Act:—

SCHEDULE

Name and address of the disqualified candidate	Serial No. and name of constituency	Commission's notification No. and date under which disqualified
1	2	3
Shri Basdeo: Village Bhaddion, Pandit Ka Purwa, P.O. Lalu Bazar, District Pratapgarh.	23-Salon	UP-HP/23/62 (27) dated the 23rd May, 1962.

[No. UP-HP/23/62(27-R)/11914.]

By order,

A. N. SEN, Under Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 26th March 1963

S.O. 953.—In exercise of the powers conferred by clause (I) of article 258 of the Constitution, the President, with the consent of the Government of West Bengal, hereby entrusts also to the Additional Superintendents of Police under the Government of West Bengal, within their respective jurisdictions the functions of the Central Government in making orders of the nature specified in clauses (a), (b) (c) and (cc) of sub-section (2) of section 3 of the Foreigners Act, 1946 (31 of 1946), subject to the following conditions, namely:—

(a) that the functions so entrusted shall be exercised in respect of nationals of Pakistan;

(b) that in the exercise of such functions the said Additional Superintendents of Police shall comply with such general or special directions as the Government of West Bengal or the Central Government may from time to time issue; and

(c) that notwithstanding this entrustment, the Central Government may itself exercise any of the said functions should it deem fit to do so in any case.

[No. 1/9/63-F. III.]

FATEH SINGH, Jt. Secy.

New Delhi, the 26th March 1963

S.O. 954.—Whereas arrangements have been made by the Central Government with the Government of Fiji for taking the evidence of witnesses residing in Fiji in relation to criminal matters in courts in India, the Central Government in pursuance of sub-section (3) of section 504 of the Code of Criminal Procedure, 1898 (5 of 1898), hereby directs that commissions from courts in India for the examination of witnesses in Fiji shall be issued in the form annexed hereto, to the Supreme Court of Fiji and that such commissions shall be sent to the Ministry of External Affairs, Government of India, New Delhi, for transmission to the Supreme Court of Fiji.

IN THE COURT OF

Commission to examine witness outside India [Section 504 (3) of the Code of Criminal Procedure, 1898]

To

Through the Ministry of External Affairs,
Government of India, New Delhi.

Whereas it appears to me that the evidence of ——— —— is necessary for the ends of justice in case No.———————*Vs.*———————————in the court of ——————————— and that such witness is residing within the local limits of your jurisdiction and his attendance cannot be procured without unreasonable delay, expense or inconvenience, I ——————————— have the honour to request and do hereby request that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witness to attend at such time and place as you shall appoint and that you will cause such witness to be examined upon the interrogatories which accompany this commission for *viva voce*).

Any party to the proceeding may appear before you by his counsel or agent or if not in custody, in person and may examine, cross examine or re-examine (as the case may be) the said witness.

And I further have the honour to request that you will be pleased to cause the answers of the said witness to be reduced into writing and all books, letters, papers, and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by your

official seal (if any) and by your signature and to return the same together with this commission to the undersigned through the Ministry of External Affairs, Government of India, New Delhi.

Given under my hand and the seal of the Court this day of ———— 19

Judge

District Magistrate

Presidency Magistrate

[No. 11/1/63-Judl.II.]

B. SHUKLA, Dy. Secy.

MINISTRY OF FINANCE

(Department of Expenditure)

New Delhi, the 23rd March 1963

S.O. 955.—In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution, and after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department, the President is pleased to make the following rules further to amend the Central Civil Services (Revised Pay) Rules, 1960, *published with the Ministry of Finance Notification No. F. 12(1)-Est.(Spl)/59 dated the 2nd August, 1960, namely:—

1. (1) These rules may be called the Central Civil Services (Revised Pay) Rules, Second Amendment Rules, 1963.

(2) They shall be deemed to have come into force on the first day of July, 1959.

2. In the Central Civil Services (Revised Pay) Rules, 1960, the existing sub-rule (2) of rule 13, shall be re-numbered as sub-rule (3) and before the sub-rule as so re-numbered, the following sub-rule shall be inserted, namely:—

"(2) Nothing contained in sub-rule (1) shall apply to the fixation of pay under this rule of a pre-1931 entrant who has retained the pre-1931 scales as a whole, on his appointment to a post which does not carry a pre-1931 scale of pay. For the purpose of fixation of pay under the Fundamental Rules his pay in the existing scale shall be deemed to be the pay *plus* dearness pay and dearness allowance reduced by the dearness allowance at the revised rates, if any, appropriate to this pay in the existing scale."

*These rules were last amended *vide* S.O. 248 dated the 25th January, 1963.

[No. F. 2(6)-E.III/63.]

(Department of Expenditure)

CORRIGENDUM

New Delhi, the 26th March 1963

S.O. 956.—In the notification of the Government of India in the Ministry of Finance (Department of Expenditure), No. S.O. 7, dated the 26th December, 1962 published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 5th January, 1963 at page 4, in line 29, *for* "1961" *read* "1951".

[No. F. 2(3)-EV(C)/62]

C. K. SUBRAMANIAN Under Secy.

(Department of Economic Affairs)

New Delhi, the 28th March 1963

S.O. 957.—Statement of the Affairs of the Reserve Bank of India, as on the 22nd March, 1963

BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital paid up	5,00,00,000	Notes	19,45,03,000
		Rupee Coin	1,80,000
Reserve Fund	80,00,00,000	Small Coin	2,26,000
		National Agricultural Credit (Long Term Operations) Fund—	
National Agricultural Credit (Long Term Operations) Fund	61,00,00,000		
		(*a*) Loans and Advances to:—	
		(*i*) State Governments	23,96,41,000
National Agricultural Credit (Stabilisation) Fund	7,00,00,000	(*ii*) State Co-operative Banks	9,60,71,000
		(*iii*) Central Land Mortgage Banks	..
		(*b*) Investment in Central Land Mortgage Bank Debentures	2,84,88,000
Deposits:—			
		National Agricultural Credit (Stabilisation) Fund	
(*a*) Government		Loans and Advances to State Co-operative Banks	..
(*i*) Central Government	61,66,14,000	Bills purchased and Discounted:—	
(*ii*) State Governments	27,61,89,000	(*a*) Internal	..
		(*b*) External	..
(*b*) Banks		(*c*) Government Treasury Bills	60,76,19,000
		Balances Held Abroad*	12,48,67,000
(*i*) Scheduled Banks	71,68,54,000		
(*ii*) State Co-operative Banks	2,51,29,000	Loans and Advances to Governments**	30,34,90,000
(*iii*) Other Banks	5,49,000	Loans and Advances to :—	
		(*i*) Scheduled Banks†	69,37,57,000
(*c*) Others	169,22,93,000	(*ii*) State Co-operative Banks††	126,56,85,000
		(*iii*) Others	1,65,57,000
Bills Payable	42,58,39,000	Investments	199,71,66,000
Other Liabilities	63,34,66,000	Other Assets	34,86,83,000
Rupees	591,69,33,000	Rupees	591,69,33,000

*Includes Cash and Short-term Securities.

**Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

†Includes Rs. 54,31,00,000 advanced to scheduled banks against usance bills under section 17(4)(c) of the Reserve Bank of India Act.

†† Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 27th day of March, 1963.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 22nd day of March, 1963

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department .	19,45,03,000		Gold Coin and Bullion :—		
Notes in circulation .	22,30,43,64,000		(a) Held in India . . .	117,76,10,000	
			(b) Held outside India . . .	..	
Total Notes issued .		22,49,88,67,000	Foreign Securities	105,08,43,000	
			TOTAL		222,84,53,000
			Rupee Coin		115,61,99,000
			Government of India Rupee Securities .		19,11,42,15,000
			Internal Bills of Exchange and other commercial paper		..
TOTAL LIABILITIES .		22,49,88,67,000	TOTAL ASSETS		22,49,88,67,000

Dated the 27th day of March, 1963.

P. C. BHATTACHARYYA,
Governor.

[No. F. 3(2)-BC/63.]

A. BAKSI, Jt. Secy.

(Department of Economic Affairs)

New Delhi, the 29th March 1963

S.O. 958.—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that in the case of the undernoted banking companies, the provisions of section 11 of the said Act shall not apply up to and including the 31st March, 1964.

1. Bank of Karad Ltd., Karad.
2. Cochin Nayar Bank Ltd., Trichur.
3. Oriental Union Bank Ltd., Kaduthuruthy.
4. Prabartak Bank Ltd., Calcutta.
5. Suburban Bank (Private) Ltd., Trichur.

[No. F. 15(2)-BC/63(i).]

S.O. 959.—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of section 11 of the said Act shall not be applicable to the Union Bank of Bijapur and Sholapur Ltd., Bijapur till the expiry of the 31st day of March 1964, in so far as the said section would, by reason only of the territorial changes and formation of new States under the provisions of the States Re-organisation Act, 1956 (37 of 1956), require it to have paid-up capital and reserves of an aggregate value which is higher than the aggregate value of paid-up capital and reserves which it was required to have under the said section on the 31st October 1956.

[No. F. 15(2)-BC/63(ii).]

B. J. HEERJEE, Under Secy.

CENTRAL BOARD OF REVENUE

INCOME-TAX

New Delhi, the 25th March 1963

S.O. 960.—In exercise of the powers conferred by sub-section (1) of section 122 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Revenue hereby makes the following further amendments in the Schedule annexed to its notification S.O. 65 (No. 2-Income-tax), dated the 12th January, 1963, namely:—

In the said schedule, for the existing entries in column 2 against 'B' Range Hyderabad, the following entries shall be substituted namely:—

'B' Range Hyderabad:

1. B-Ward, Hyderabad.
2. Income-tax cum Wealth Tax Circle No. II, Hyderabad.
3. Special Investigation Circle, Hyderabad.
4. Special Survey Circle, Hyderabad.
5. Multipurpose Projects Circle, Hyderabad.
6. Salary Circle, Hyderabad.
7. Adoni.
8. Kurnool.
9. Nizamabad.
10. Khammam.
11. Warangal.
12. Mahboobnagar.
13. Companies Circle, Hyderabad.

Explanatory Note

The amendments have become necessary on account of creation of a new Income-tax Circle in the Commissioner's charge.

(The above note does not form a part of the notification but is intended to be merely clarificatory).

[No. 13 (F. No. 50/1/63-IT.]

S.O. 961.—In exercise of the powers conferred by section 126 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Revenue hereby cancels Serial No. 32-B and the entries there against of its notification S.R.O. 1214 (No. 44 Income-tax) dated the 1st July, 1952.

This notification shall take effect from the 1st April, 1963

[No. 14 (F. No. 55/20/62-IT.]
J. RAMA IYER, Under Secy.

ESTATE DUTY

New Delhi, the 29th March 1963

S.O. 962.—In exercise of the powers conferred by sub-section (1) of Section 85 of the Estate Duty Act, 1953 (34 of 1953), the Central Board of Revenue makes the following amendments in the Estate Duty Rules, 1953*, the same having been previously publishehd as required by the said sub-section, namely:—

THE ESTATE DUTY (AMENDMENT) RULES, 1963.

1. These rules may be called the Estate Duty (Amendment) Rules, 1963.

2. In the Estate Duty Rules, 1953, for rule 42, the following rule shall be substituted, namely:—

"42. *Terms on which period referred to in sub-section* (3) *of section* 53 *may be extended*:—

The Controller may, if he considers that there are reasonable grounds for doing so, extend the period of six months referred to in sub-section (3) of section 53 on the following terms, namely:—

(a) the person accountable shall furnish to the Controller information as to the principal value of all the property passing on the death of the deceased, to the extent it is within his knowledge;

(b) the person accountable shall pay the amount, or furnish security to the satisfaction of the Controller for the payment of the amount, which the Controller may, on the basis of the information furnished by the accountable person and all other information available to him, estimate to be the amount of Estate Duty payable;

(c) the person accountable shall pay interest for the period by which the original period of six months has been extended, on the amount specified in clause (e) or on such lower amount as the Controller may in his discretion decide;

(d) the rate of interest shall be six per cent per annum:

Provided that the Controller may, in any particular case, specify such reduced rate of interest as may be appropriate to that case in accordance with the general instructions issued by the Board in this behalf;

(e) the amount referred to in clause (c) shall be the excess, if any, of the duty determined under section 58 or section 69, as the case may be, over the amount, if any, actually paid under clause (b) of this rule;

(f) if the duty determined under section 58 is reduced in appeal, the interest shall be recomputed with reference to the duty as so reduced, and if the interest already paid exceeds the interest so recomputed, the excess shall be refunded."

Explanatory Note

(This note is not part of the notification but is intended to be merely clarificatory)

The existing rule 42 prescribes the conditions under which the Controller of Estate Duty may grant extension of time for filing the Statement of account referred to in section 53(3) of the Estate Duty Act, 1953. These conditions are modified as above with a view to removing certain practical difficulties.

[No. 5/F. No. 12/1/62-ED.]
T. R. VISWANATHAN, Secy

*S.R.O. 556 of 1954 as last amended by S.O. 1619 of 1960.

MINISTRY OF COMMERCE AND INDUSTRY

Bombay, the 16th March 1963

S.O. 963.—In exercise of the powers conferred on me by clauses 3, 4, 13, 14A and 17 of the Cotton Control Order, 1955 and of all other powers enabling me in this behalf, I hereby make the following further amendment in the Textile Commissioner's Notification No. S.O. 2892, dated the 5th September, 1962, namely:—

In the said Notification, in paragraph 5(ii), after the words "cotton waste", the following shall be added, namely:—

"other than that supplied in loose condition to manufacturers".

Sd/- R. DORAISWAMY,
Textile Commissioner.

[No. 24(4)-Tex(A)/62.]

Bombay, the 25th February 1963

S.O. 964.—In exercise of the powers conferred on me by Clauses 3, 4, 13, 14A and 17 of the Cotton Control Order, 1955, and of all other powers enabling me in this behalf, I hereby make the following further amendment in the Textile Commissioner's Notification No. S.O. 2892, dated the 5th September, 1962, namely:—

In the said Notification, in paragraph 9(t)(1), after the word 'Maharashtra', the following shall be added, namely:—

"and '170-CO2' grown in the Bijapur and Belgaum Districts of Mysore State".

Sd./- R. DORAISWAMY,
Textile Commissioner.

[No. 24(4)-Tex(A)/62.]

M. S. BAWA, Under Secy.

New Delhi, the 29th March 1963

S.O. 965.—In exercise of the powers conferred by sub-section (2) of section 4 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956), read with rule 3 of the Khadi and Village Industries Commission Rules, 1957, the Central Government hereby re-appoints each of the persons mentioned in column 2 of the table below, as member of the Khadi and Village Industries Commission upto the end of March, 1966, with effect from the date specified against his name in the corresponding entry in column 3 of the said table:—

TABLE

S. No.	Name	Date
1.	Shri Pranlal Sunderji Kapadia	1st April, 1963.
2.	Shri Dhwaja Prasad Sahu	1st April, 1963.
3.	Shri K. Arunachalam	6th May, 1963.

[No. 41/4/62-KVI(P)(I).]

S.O. 966.—In exercise of the powers conferred by sub-section (2) of section 4 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956), the Central Government hereby appoints each of the persons mentioned in column

2 of the table below as member of the Khadi and Village Industries Commission upto the end of March, 1966 with effect from the date specified against his name in the corresponding entry in column 3 of the said table:—

TABLE

S. No.	Name	Date
1.	Shri U. N. Dhebar	1st April, 1963.
2.	Shri Dwarkanath V. Lele	1st April, 1963.

[No. 41/4/62-KVI(P)(II).]

S.O. 967.—In pursuance of sub-section (2) of section 4 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956), the Central Government hereby nominates Shri U. N. Dhebar to be the Chairman of the Khadi and Village Industries Commission with effect from the 1st April, 1963.

[No. F. 41/4/62-KVI(P)(III).]

S.O. 968.—In pursuance of sub-section (3) of section 4 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956), the Central Government hereby appoints Shri K. Arunachalam to be the Vice-Chairman of the Khadi and Village Industries Commission with effect from the 1st April, 1963.

[No. F. 41/4/62/KVI(P)(IV).]

A. VISVANATH, Dy. Secy.

(Department of Company Law Administration)

CHARTERED ACCOUNTANTS

New Delhi, the 27th March 1963

S.O. 969.—In pursuance of clause (ii) of Regulation 15A and item (iii) of sub-clause (d) of clause (1) of Regulation 17, of the Chartered Accountants Regulations, 1949, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Commerce and Industry (Department of Company Law Administration) No. S.O. 2880, dated the 29th November, 1961, namely:—

In the said notification for item 9, the following item shall be substituted, namely:—

"9. The Degree Examination of Shreemati Nathibai Damodar Thackersey Indian Women University, Bombay in so far as it relates to persons who pass that examination on completion of the three year course after passing the matriculation examination."

[No. 7/28/62-Inst.]

T. S. KANNAN, Under Secy.

(Department of Company Law Administration)

New Delhi, the 29th March 1963

S.O. 970.—In exercise of the powers conferred by section 410 of the Companies Act, 1956 (I of 1956) and in continuation of Notification of the Government of India in the Ministry of Commerce and Industry (Department of Company Law Administration) No. S.O. 1132, dated the 9th April 1962 relating to the appointment of Shri K. K. Sharma, as member and Chairman of the Advisory Commission, the Central Government hereby extends the term of appointment of Shri K. K. Sharma, as a member of the Advisory Commission for a further period of two years with effect from the 1st April 1963, and appoints him as Chairman thereof for the extended period of his appointment as a member of the Advisory Commission.

[No. 6(21)-C.I/61.]

B. S. MANCHANDA, Jt. Secy.

(Office of the Deputy Chief Controller of Imports & Exports)

(Central Licensing Area)

NOTICE

New Delhi, the 29th March 1963

S.O. 971.—It is hereby notified, that in exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, the Government of India, in the Ministry of Commerce and Industry propose to cancel the import Licence No. A-665909/61 dated 6th March 1962 valued at Rs. 2250 for the import of Hard Glass Tubing granted by the Dy. Chief Controller of Imports and Exports (Central Licensing Area), New Delhi to M/s. Grover Scientific Works 39 Ansari Market, Darya Ganj, Delhi, unless sufficient cause against this is furnished to the Dy. Chief Controller of Imports and Exports (Central Licensing Area), New Delhi within ten days of the date of issue of this Notice by the said M/s. Grover Scientific Works, 39, Ansari Market, Darya Ganj, Delhi, or any Bank or any other party, who may be interested in it.

2. The grounds of the proposed cancellation of the Licence in question is that the licence has been obtained by misrepresentation of facts.

3. In view of what is stated above, M/s. Grover Scientific Works, 39, Ansari Market, Darya Ganj, Delhi or any Bank or any other party who may be interested in the said licence No. A 665909/61, dated 6th March 1962 are hereby directed not to enter into any commitments against the said licence and return the same immediately to the Dy. Chief Controller of Imports & Exports (Central Licensing Area) New Delhi-1.

[No. DCCI.I(CLA)/123/62.]

RAM MURTI SHARMA,
Dy. Chief Controller of Imports and Exports.

(Indian Standards Institution)

New Delhi, the 27th March 1963

S.O. 972.—In partial modification of the rate of marking fee for Maize Starch, notified in the Schedule annexed to the Ministry of Commerce and Industry (Indian Standards Institution), Notification No. S.O. 1129, dated the 27th April 1960, published in the Gazette of India, Part II—Section 3—Sub-section (ii), dated the 7th May 1960, the Indian Standards Institution hereby notifies that the marking fee per unit for Maize Starch, details of which are given in the Schedule hereto annexed, has been revised. The revised rate of marking fee shall come into force with effect from 1st January, 1963.

THE SCHEDULE

Sl. No.	Product/Class of Products	No. and Title of relevant Indian Standard	Unit	Marking Fee per Unit
1.	Maize Starch	(i) IS : 1005-1957 Specification for Edible Maize Starch (Corn Flour) (ii) IS: 1184-1957 Specification for Maize Starch for Use in the Cotton Textile Industry	One Metric Tonne	25 nP. per unit with a minimum of Rs. 200 00 for production during a calendar year.

[No. MD/18:2.]

D. V. KARMARKAR,
Head of the Certification Marks Division.

ADDENDA

In the Ministry of Commerce and Industry (Indian Standards Institution) Notification, published in the Gazette of India, Part II, Section 3, Sub-Section (ii), dated 27th October, 1962, under S.O. 3223, dated 15th October 1962, the following additions may be made in Col. 2 of the Schedule:

'Wrought Aluminium and Aluminium Alloy Sheets, Strips and Circles'

MINISTRY OF STEEL & HEAVY INDUSTRIES

(Department of Heavy Industries)

ORDER

New Delhi, the 21st March 1963

S.O. 973.—In exercise of the powers conferred on me, under clause 3 of the Scooters (Distibution & Sale) Central Order, 1960, I hereby make the following order, namely:

1. Each manufacturer shall reserve, for priority allocation by each State Government, 5 per cent of the number of scooters allocated for distribution within that State during each quarter provided that such allocation to any State, other than Centrally Administered Territory, is not less than five per quarter, or more than ten per quarter and, in the case of a Centrally Administered Territory not less than two per quarter or not more than ten, per quarter.

2. This Order will take effect from the quarter beginning from the 1st March, 1963.

[No. A.E. Ind. 9(4)/63.]

R. R. RAO,
Controller of Scooters.

MINISTRY OF MINES & FUEL

ERRATA

New Delhi, the 21st March 1963

S.O. 974.—In the Notification of the Government of India, in the Ministry of Mines and Fuel, S.O. No. 220, dated the 16th January, 1963, published in Part II, Section 3, Sub-Section (ii) of the Gazette of India, dated the 26th January, 1963, at pages 304 and 305.

at page 305 in the ninth line *for* "Hosla, Manuam" *read* "Hesla. Manuan".

[No. F. C2-20(38)/62.]

S.O. 975.—In the Notification of the Government of India in the Ministry of Mines and Fuel S.O. 221 dated the 16th January, 1963 published in Part II, Section 3, Sub-section (ii) of the Gazette of India, dated 26th January, 1963.

At page 305, in the Twelfth line *for* 'Bhandavdei' *read* 'Bhandardei'.

[No. F. C2-20(8)/61.]

S.O. 976.—In the Notification of the Government of India, in the Ministry of Mines and Fuel, S.O. No. 218 dated the 14th January, 1963, published in Part-II, Section 3, Sub-Section (ii) of the Gazette of India, dated the 26th January, 1963, at pages 302 and 303,

at page 303, in the twenty-sixth line *for* "635(P), 1372" *read* "635, 636(P), 1372".

[No. F. C2-20(21)/62.]

S.O. 977.—In the Notification of the Government of India in the Ministry of Mines and Fuel S.O. 219 dated the 14th January, 1963, published in Part II, Section 3, Sub-Section (ii) of the Gazette of India, dated the 26th January, 1963, at pages 303 and 304,

at page 304, in the seventh line *for* "Part" *Read* "Full" and in the twentieth line *for* "Chhotkipon" *Read* "Chhotkipona".

[No. F. C2-20(37)/62.]

B. ROY, Under Secy.

MINISTRY OF FOOD AND AGRICULTURE

(Department of Agriculture)

New Delhi, the 28th March 1963

S.O. 978.—In exercise of the powers conferred by section 6 of the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937), the Central Government hereby declares that the provisions of the said Act shall apply to the following article, namely:—

Animal casings (Cattle, buffaloes, sheep, goats and pigs).

[No. F. 17-10/62-AM.]

New Delhi, the 29th March 1963

S.O. 979.—In exercise of the powers conferred by section 6 of the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937), the Central Government hereby declares that the provisions of the said Act shall apply to the following articles, namely:—

1. Guar Gum.
2. Karaya Gum.
3. Senna Leaves and Pods.
4. Palmyra fibre.
5. Catechu.
6. Tendu Leaves.

[No. F. 17-9/62-AM.]

V. S. NIGAM, Under Secy.

(Department of Agriculture)

CORRIGENDUM

New Delhi, the 29th March 1963

S.O. 980.—In S.O. 879, dated the 25th March, 1963, *for* "grass", *substitute* "grass and hay,".

[No. F.1-5/63-C(E).]

N. RANGANATHAN, Under Secy.

(Department of Agriculture)

Indian Council of Agricultural Research

New Delhi, the 19th March 1963

S.O. 981.—Under Section 4 of the Indian Cotton Cess Act, 1923 (14 of 1923), the Central Government are pleased to appoint the following persons to be members of the Indian Central Cotton Committee, Bombay for a period of three years w.e.f. 1st April 1963:

S.No.	*Name*	*Part of Section 4*
1.	Dr. M. B. Ghatge, Director of Agriculture, Maharashtra State, Bombay.	4(ii)
2.	Shri G. E. Aperghis, Rallis India Ltd., Bombay.	4(iv)
3.	Shri Hansraj Madhavrao Patil, Secretary, District Farmers' Union, Dhulia, Maharashtra State.	4(viii)
4.	Thakur Nahar Singh, P.O. Badnawar, Dhar Distt., Madhya Pradesh.	4(viii)

[No. 1-7/63-Com.III.]

New Delhi, the 26th March 1963

S.O. 982.—The Indian Merchants Chamber, Bombay having re-nominated Shri P. T. John, General Manager, Tata Oil Mills, Ernakulam as a member of the Indian Central Coconut Committee under Clause (c) of Section 4 of the Indian Coconut Committee Act, 1944 (I of 1944), it is hereby notified that Shri P. T. John, aforesaid shall be member of the said Committee for the period ending 31st March 1966.

[No. 12-10/62-Com.I.]

S.O. 983.—Under Section 4 of the Indian Cotton Cess Act, 1923 (14 of 1923), the Central Government are pleased to re-appoint the following persons to be members of the Indian Central Cotton Committee, Bombay, for a period of three years with effect from 1st April, 1963:

S. No.	*Name*	*Part of Section 4*
1.	Shri V. Karthikeyan, Director of Agriculture, Madras.	4(ii)
2.	Shri Ram Kishan Devi Kishan Bahety, Pro: Jalkishan Gopikishan Ginning and Pressing Factory, Sanawad, Madhya Pradesh	4(v)
3.	Shri Mangat Singh, P.O. Rodya, via Sanawad, Madhya Pradesh	4(viii)

[No. 1-7/63-Com. III.]

N. K. DUTTA, Under Secy.

MINISTRY OF HEALTH

New Delhi, the 30th March 1963

S.O. 984.—In exercise of the powers conferred by section 8A of the Aircraft Act, 1934 (22 of 1934) the Central Government hereby makes the following further amendments in the Indian Aircraft (Public Health) Rules, 1954 published with the notification of the Government of India in the Ministry of Health No. S.R.O. 2218, dated the 17th October, 1955, namely:—

Amendments

1. These Rules may be called the India Aircraft (Public Health) Amendment Rules, 1963.

2. In rule 2 of the Indian Aircraft (Public Health) Rules, 1954, in sub-rule (20), for the words "means a certificate conforming with the requirements and the model laid down in Schedules III, IV and V to these Rules" the following words shall be substituted, namely:—

"means a certificate which—

(i) conforms to the requirements and the model laid down in Schedules III, IV and V to these Rules;

(ii) is issued only to individuals and cannot, in any circumstances, be used collectively;

(iii) is issued in the case of children separately and is not incorporated in the mother's certificate;

(iv) is completed in English or in French;

(v) is signed in the case of an international certificate, by the parent or guardian of a child who is unable to sign or which bears in the case of an illiterate person, the mark of such illiterate person, duly attested by another person to whom such illiterate person is personally known;

(vi) is signed, in the case of an international certificate issued in India, in his own hand by a qualified medical practitioner whose name is enrolled in the Indian Medical Register maintained under section 21 of the Indian Medical Council Act, 1956 (102 of 1956)".

[No. F. 15-2/62-IH.]

BASHESHAR NATH, Under Secy.

MINISTRY OF TRANSPORT & COMMUNICATIONS

(Department of Transport)

(Transport Wing)

New Delhi, the 25th March 1963

S.O. 985.—In exercise of the powers conferred by sub-section (1) of Section 3 of the Manipur (Sales of Motor Spirit and Lubricants) Taxation Act, 1962 (55 of 1962), the Central Government hereby fixes, with effect from the 1st April, 1963, the following rates of Sales Tax in respect of the goods detailed below:—

Goods	Rates
(1) Motor Spirit (except diesel oil and internal combustion oils other than petrol).	five naye paise per litre.
(2) Lubricant.	six naye paise per litre.
(3) Diesel oil and internal combustion oils other than petrol.	two naye paise per litre.
(4) Crude oil.	one naya paisa per litre.

[No. 11-TL(28)/62.]

K. SRINIVASAN, Dy. Secy.

(Department of Transport)

(Transport Wing)

PORTS

New Delhi, the 25th March 1963

S.O. 986.—In pursuance of sub-section (3) of Section 6 of the Bombay Port Trust Act, 1879 (Bombay Act 6 of 1879), the Central Government hereby publishes the following returns received from (i) the Indian Merchants' Chamber, Bombay, (ii) the Indian National Steamship Owners' Association, Bombay, (iii) All India Sailing vessels Association, Bombay, (iv) Maharashtra Chamber of Commerce, Bombay, (v) Bombay Chamber of Commerce and Industry, Bombay (vi) the East India Cotton Association, Limited, Bombay, (vii) the Millowners' Association, Bombay and (viii) Bombay Municipal Corporation, Bombay:—

Returns showing the names of persons elected in accordance with the provisions of the Bombay Port Trust Act, 1879 to be members of the Board of Trustees of the Port of Bombay for a period of two years from the 1st April 1963.

Name of Electing Body	Name of persons elected
1	2
The Indian Merchants' Chamber, Bombay . . .	Shri Devji Rattansey. Shri B.D. Somani. Shri Bhawanji A. Khimji. Shri Pravinchandra V. Gandhi.

1	2
The Indian National Steamship Owners' Association, Bombay	Shri G.T. Kamdar. Shri Vasant J. Sheth.
All India Sailing vessels Industries Association, Bombay	Shri Damodar Mathuradas Ashar
Maharashtra Chamber of Commerce, Bombay	Shri Ramkrishna J. Bajaj.
Bombay Chamber of Commerce & Industry, Bombay	Mr. F. Rozario. Mr. R.G. Ernst.
The East India Cotton Association Limited, Bombay	Shri Madanmohan R. Ruia.
The Millowners' Association, Bombay	Mr. Pratap Bhogilal.
Bombay Municipal Corporation, Bombay	Dr. Shantilal Girdharlal Patel. Shri Sitaram Ramchandra Patkar

[No. 8-PG(2)/63-I.]

S.O. 987.—In exercise of the powers conferred by section 7 of the Bombay Port Trust Act, 1879 (Bombay Act 6 of 1879), the Central Government hereby appoints the following persons to be members of the Board of Trustees of the Port of Bombay for a period of two years from the 1st April 1963 :—

The Commissioner of Police, Bombay (Representative of the Government of Maharashtra).

Shri S. K. Venkatachalam, Senior Deputy Director General of Shipping, Bombay. (Representative of the Mercantile Marine Department, Bombay).

[No. 8-PG(2)/63-II.]

HARBANS SINGH, Under Secy.

(P. & T. Board)

New Delhi, the 26th March 1963

S.O. 988.—In pursuance of para (a) of Section III of Rule 434 of Indian Telegraph Rules, 1951, as introduced by S.O. No. 627 dated 8th March, 1960, the Director General Posts and Telegraphs, hereby specifies the 1st May, 1963 as the date on which the Measured Rate System will be introduced in Muzaffarnagar Telephone Exchange.

[No. 31/9/62-PHB.]

New Delhi, the 28th March 1963

S.O. 989.—In pursuance of para (a) of Section III of Rule 434 of Indian Telegraph Rules, 1951, as introduced by S.O. No. 627, dated 8th March, 1960, the Director General Posts and Telegraphs, hereby specifies the 1st May, 1963, as the date on which the Measured Rate System will be introduced in Karur Telephone Exchange.

[No. 31/11/63-PHB.]

S. RAMA IYER,
Assistant Director General (PHB).

MINISTRY OF SCIENTIFIC RESEARCH AND CULTURAL AFFAIRS

New Delhi, the 23rd March 1963

S.O. 990.—In pursuance of sub-rule (1) of rule 11 and clause (a) of sub-rule (2) of rule 14 of the Central Civil Services (Classification, Control and Appeal)

Rules, 1957, the President hereby makes the following further amendments in the Schedule to the Notification of the Government of India in the Ministry of Scientific Research and Cultural Affairs No. S.O. 2054, dated the 9th September, 1959, namely:—

In the said Schedule—

(1) in Part I relating to General Central Services, Class II, after the item "all Gazetted posts" in column 1 under the heading "National Museum, New Delhi" and the entries relating thereto, the following shall be added at the end, namely :—

"Vijnan Mandirs (Non-Gazetted)			
Vijnan Mandir Officer.	Joint Secretary, Ministry of Scientific Research and Cultural Affairs.	Joint Secretary, Ministry of Scientific Research and Cultural Affairs.	All"

(2) in Part II relating to General Central Service Class III, the item "Vijnan Mandir Officers" in column, under the heading "Vijnan Mandirs" shall be omitted.

[No. 2/21/57-VM.I.]

S. K. SANYAL, Under Secy.

MINISTRY OF COMMUNITY DEVELOPMENT AND CO-OPERATION

(Department of Coopn.)

New Delhi, the 18th March 1963

S.O. 991.—In exercise of the powers conferred by Section 5B of the Multi-Unit Co-operative Societies Act, 1942 (6 of 1942) the Central Government hereby directs that all powers or authority exerciseable by the Central Registrar of Co-operative Societies under the said Act shall also be exerciseable by Shri T. A. Pratinidhi, Registrar of Co-operative Societies, Goa, Daman and Diu, in respect of the Multi Unit Co-operative Societies which are or are deemed to be actually registered in the Union Territory of Goa, Daman and Diu.

[No. 3/17/62CT.]

New Delhi, the 26th March 1963

S.O. 992.—In exercise of the powers conferred by Section 5-B of the Multi-Unit Co-operative Societies Act, 1942 (6 of 1942) the Central Government hereby directs that the following amendment shall be made in the Notification of the Government of India in the Ministry of Community Development and Co-operation (Department of Co-operation), No. S.O. 1593, dated the 28th June, 1961, published at page 1555 of Part II, Section 3(ii) of the Gazette of India of the 8th July, 1961, namely:—

In the said Notification against Serial No. 7 for the entry "Shri Devinder Nath", the entry "Shri N. V. Krishnan" shall be substituted.

[No. 3-17/62-CT.]

S. S. PURI, Dy. Secy.

MINISTRY OF WORKS, HOUSING AND REHABILITATION

(Department of Rehabilitation)

(Office of the Chief Settlement Commissioner)

CORRIGENDUM

New Delhi, the 26th March 1963

S.O. 993.—In the Notification of the Government of India in the Ministry of Works, Housing & Rehabilitation (Department of Rehabilitation), office of the

Chief Settlement Commissioner, S.O. No. 519, dated the 15th February, 1963 published at pages 625-626 of part II Section 3(ii) of the Gazette of India, dated the February 23, 1963, the name of the State "Maharashtra" may be substituted by "Gujarat".

[No. 5(7)/L&R/63.]

M. J. SRIVASTAVA,
Settlement Commissioner & *Ex-Officio* Under Secy.

DELHI DEVELOPMENT AUTHORITY

New Delhi, the 25th March 1963

S.O. 994.—In exercise of the powers conferred by section 57 of the Delhi Development Act, 1957 (61 of 1957), the Delhi Development Authority hereby makes with the previous approval of the Central Government, the following regulations further to amend the Delhi Development Authority (Salaries Allowances and Conditions of Service) Regulations, 1961, published with the Notification of the Delhi Development Authority No. S. O. 2226, dated the 16th September, 1961 namely:—

1. These regulations may be called the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Third Amendment Regulations, 1963.

2. In the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961, in Part III, for regulation 12, the following shall be substituted, namely:—

"*Classification of posts*

12. *The services and posts under the Authority shall, for purposes of appointment, control and discipline, be classified as follows*:—

Sl. No.	*Description of posts*	*Classification of posts.*
1.	A post carrying a pay of, or a scale of pay the maximum of which is, not less than Rs. 950·00	Class I.
2.	A post carrying a pay of, or a scale of pay the maximum of which is, not less than Rs. 575·00 but is less than Rs. 950·00	Class II.
3.	A post carrying a pay of, or a scale of pay the maximum of which is, not less than Rs. 110:00 but is less than Rs. 575·00	Class III.
4.	A post carrying a pay of, or a scale of pay the maximum of which is, less than Rs. 110·00	Class IV.

NOTE.—(a) For the purposes of this regulation 'pay' has the meaning assigned to it in F.R.9(21)(a)(i);

(b) The pay or scale of pay of a post means the pay or scale of pay prescribed by the Authority.

Exception.—Officers and employees of the Authority who hold posts under Government or any other organization shall retain the classification applicable to them in Government service or in their parent organisation".

[No. F. 1(13)/62-GA.]

R. K. VAISH, Secy.

MINISTRY OF RAILWAYS

(Railway Board)

New Delhi, the 20th March, 1963.

S.O. 995.—In exercise of the powers conferred by Section 65 of the Indian Railways Act, 1890 (IX of 1890), read with the Notification of the Government of India in the late Department of Commerce and Industry, No. 801, dated 24th

March, 1905, the Railway Board hereby makes the following amendments in the rules for the preparation of Accident returns published with the notification of the Government of India in the Ministry of Railways (Railway Board), No. 743-ST/Genl., dated 10th July, 1951, namely:—

(A) In Table 2—Item I I—Heading—

The words "Accidents due to failures of engines and rolling stock" shall be substituted by the words "Failures of engines and rolling stock".

(B) In Table 2—Item III(1)—

The following shall be substituted for existing item (b) and its explanatory note:

"(b) Machinery, springs, etc.,—

(i) Time failures, *i.e.*, failures of engines on trains when the delay to trains is one hour or over. (Failures when merely shunting in yards are not to be included).

(ii) Other failures".

(C) In Table 2-Item III(2)—

The following shall be substituted for existing item (b) and its explanatory note:

"(b) Other causes—

(i) Time failures, *i.e.*, failures of engines on train or when proceeding to work a train when the delay to trains is one hour or over. [Failures when merely shunting in yards are not to be included. Failures of engines due to want of water or fire bars melting and dropping in the ash pan owing to excessive heat are not to be included under this head but shall be classified under head VI(7)]

(ii) Other failures".

(D) These amendments shall take immediate effect.

[No. 62/Stat. 1/32/General.]

P. C. MATHEW, Secy.

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 26th March 1963

S.O. 996.—In exercise of the powers conferred by sub-section (1) of section 83 of the Mines Act, 1952 (35 of 1952), the Central Government hereby exempts for a period of three months or till the cessation of the operation of the Proclamation of emergency, whichever is earlier, the mine operated by Messrs. Sandur Manganese and Iron Ores (Private) Limited from the operation of the following provisions of the said Act, namely:—

(i) section 28,

(ii) section 29,

(iii) sub-section (1) of section 30 and sub-section (1) of section 31 in so far as the said sub-sections restrict the number of weekly hours to forty-eight, and

(iv) section 33,

subject to the condition that—

(i) no person shall be employed on more than one weekly day of rest out of every four weekly days of rest; and

(ii) the exemption made by this notification shall apply only to the employment of persons on one weekly day of rest out of every four weekly days of rest.

[No. 6/5/63-MI.]

R. C. SAKSENA, Under Secy.

New Delhi, the 26th March 1963

S.O. 997.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Labour Court, Madurai, in the industrial dispute between the employers in relation to the Pandyan Insurance Company Limited and their workmen.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, MADURAI

PRESENT:

Sri R. S. D. Mani, M.A., B.L.,—Presiding Officer

Friday the 1st day of March, 1963

INDUSTRIAL DISPUTE No. 32/62.

BETWEEN:

The General Secretary, Pandyan Insurance Employees' Union, Opp. Pandiyan Building, West Marret Street, Madurai-1—*Petitioner.*

AND

The Manager, Pandyan Insurance Co., Ltd., Pandiyan Building, West Veli Street, Madurai-1.—*Respondent.*

This dispute coming on before me for hearing on Saturday the 16th day of February, 1963 in the presence of Sri N. K. Bahulayan and Sri P. Paramasivam advocates appearing for the petitioner and of Sri C. Doraswami, Officer of the Employee's Federation of South India, appearing for the respondent and having stood over till this day for consideration, the court passed the following:—

AWARD

This is an Industrial Dispute referred to this Court for adjudication by the Government of India by its order dated 24th December, 1962. The issue referred for adjudication is this:—

> Whether the termination of employment of Sri C. Raju, who was employed as a Sweeper in the Madurai Branch of the Pandyan Insurance Company Limited, was justified and, if not, to what relief is he entitled?

2. On behalf of the workman C. Raju, the General Secretary of the Pandyan Insurance Employees' Union has filed a claim statement. It is averred there that Raju was handed over to the police by the respondent for the theft of 2 ten rupee currency notes from the office room of Mr. Mackay, the Managing Director of the respondent, that the police after investigations dropped the complaint, that the respondent held a departmental enquiry on 23rd May, 1962 and terminated Raju's services on mere suspicion because Raju is an active member of the Union. The domestic enquiry is said to have contravened principles of natural justice.

3. The respondent contends that the departmental enquiry was conducted in all fairness, that the circumstantial evidence showed that Raju was the culprit and that Raju's dismissal is justified.

4. In case of this kind where a departmental enquiry has been held by the management, it is settled law that what this Court has to see is whether the enquiry was conducted in a fair manner and whether the finding of guilt is reasonable and not perverse.

5. The facts of the case are simple. Sri Raju was employed as a sweeper under the respondent. A sum of Rs. 20 in two currency notes of the denomination of Rs. 10 each was found missing from the office room of the Managing Director of the respondent, Mr. Mackay on 19th May, 1962. A departmenal enquiry was held on 23rd May, 1962 by the Administrative Officer of the respondent Mr. Perianayagam. The record of the enquiry is Ex. M. 4. He recorded a finding that Sri Raju was guilty of theft and he recommended that a deterrent punishment should be meted out. The Manager of the respondent, Sri S. Vinayagam, accepted the finding and the recommendation as to the quantum of the penalty and dismissed Raju from service.

6. The first point taken on behalf of the workman Raju is that the police to whom the theft had been reported investigated it and found that there was no

case made out against Raju and therefore it was not open to the respondent to hold a deparmental enquiry. There is no substance in this contention. Merely because the Police could not and did not take action, the respondent was not precluded thereby from conducting its own investigation. It may well be that there was not sufficient material for the Police to bring home a charge of theft to Raju in the criminal court. But, the quantum of evidence necessary in a domestic enquiry may not be the same. So, there was nothing wrong in the respondent deciding to hold a domestic enquiry, notwithstanding the inability of the Police to charge-sheet Raju.

7. As regards the domestic enquiry itself, the grievance of the workman is that he was hustled. A charge memo was served on Raju on 22nd May, 1962 and he was told to be ready for the enquiry the same day after submitting his explanation. But, the record shows that the respondent postponed the enquiry to the next day namely 23rd May, 1962. So, the charge that Raju was hustled fails. Raju gave a petition to the respondent to postpone the enquiry but the ground on which he requested the postponement was not that he wanted time to get ready for the enquiry but the pendency of the complaint to the Police. What Raju said was that no domestic enquiry should be held while the complaint to the Police was still pending. This, the respondent was not bound to comply with. The complaint to the Police had nothing to do with the domestic enquiry for the reasons already stated.

8. No other complaint was raised by Mr. Bahulayan, appearing for the petitioner in regard to the propriety of the domestic enquiry. It was admitted by him that the enquiry was fairly conducted, the workman being given every opportunity to defend himself. The officer who conducted the enquiry has been examined on this point and his evidence has not been seriously challenged. I have no doubt, therefore, that the enquiry was conducted in a fair manner and the workman was given a reasonable opportunity to defend himself. So, there is no scope for interference on the part of this court.

9. But, what Mr. Bahulayan contended was that the evidence adduced at the enquiry does not establish the guilt of Raju. I must reject this contention also because it is again well settled that the quantum of evidence is not for this Court to assess but for the Management. This court cannot step into the shoes of the Management for that purpose. The position will undoubtedly be different if the management had acted on no evidence at all. That is not the case here. I have gone through the evidence recorded at the domestic enquiry (See Ex. M. 4). There certainly is evidence on which the enquiry officer could have reached the decision that he did namely that Raju was the person responsible for the theft. This is not a case of a conclusion based on no evidence.

10. Finally, it was contended by Mr. Bahulayan that the finding as to Raju's guilt is perverse. Mr. Bahulayan pointed out that there were several other workmen in the building, and that it cannot be said with any degree of certainty that it should have been Raju who made away with the money of the Managing Director. It is undoubtedly the duty of this Court to see whether the conclusion reached by the respondent is so perverse that no man of ordinary prudence would reach such a conclusion on the evidence recorded at the domestic enquiry.

11. For this purpose, I have scrutinised with care the evidence recorded. On the face of it, there is one lacuna, namely the assumption that the Managing Director, Mr. Mackay had lost Rs. 20 on 19th May, 1962. There was no evidence led at the domestic enquiry that Mr. Mackay had in fact left Rs. 20 in his office room and that the said sum was missing from his room on 19th May, 1962. That lacuna, however, has been cured and both Mr. Mackay and his office assistant, Mr. Sethuratnam have been examined in this court on the point. Mr. Mackay has deposed that he left on his table in an envelope two currency notes of the value of Rs. 10 each on 18th May, 1962. When he returned to his office after lunch, the two notes were found missing. He called Mr. Sethuratnam and both made a search in the office room and eventually found them in another cup-board. Mr. Mackay decided to leave them where they were. On the morning of the 19th May 1962, Mr. Mackay arrived at the office took Mr. Sethuratnam and on entering his office made a bee line for the cup-board but the two currency notes were missing. The evidence of Mr. Mackay has not been challenged in his cross examination. Indeed, Mr. Bahulayan conceded that the loss of the money cannot be disputed. Therefore, the only other point is whether on the evidence, the conclusion that Raju was responsible for the theft is unreasonable or perverse.

12. I may state at once that the report drawn up by the enquiring officer, Mr. Perianayagam, on the evidence placed before him is admirable for its clarity and precision. After giving a resume of the facts of the case, he observes that from the circumstances of the theft, it is evident that the culprit must be the person who had access to the room all alone on both the days i.e., 18th May, 1962 at the interval time on 19th May, 1962 between 6 a.m. and 8-50 a.m. If I may say so, that was the crux of the matter and such clarity of perception in one not versed in legal practice such as Mr. Perianayagam is indeed commendable. Mr. Perianayagam goes on to point out in his report how the evidence showed unmistakably that it was Raju and Raju alone who went into Mr. Mackay's office room alone on both the 18th and the 19th of May 1962 at the relevant times. I have gone through the evidence with care and satisfied myself that that is the state of the evidence. Raju when examined as to his activities on the 18th of May 1962 was asked at what time he went into Mr. Mackay's room for second time and he replied that it was at 1-05 p.m. and when questioned further whether there was anybody else inside the room then, said that there was nobody. So, on his own admission, Raju was alone in Mr. Mackay's office room about 1-05 p.m. on the 18th May, 1962. That was the time when Mr. Mackay had left the two currency notes in an envelope on his office table and gone for lunch. So, clearly Raju then had the opportunity to take the envelope with the currency notes and place it in another place, namely the cup-board where it was subsequently found by Mr. Mackay about 4-30 p.m. on the 18th May, 1962. The money was left there itself as spoken to by Mr. Mackay.

13. Coming to the events on 19th May, 1962, Raju was asked what were his duty hours on that date to which he replied that it was from 7 a.m. to 11 a.m. and 12 noon to 4 p.m. But, it is significant that he admitted that on the 19th he actually came to the office at 5-55 a.m. There was no particular reason why Raju who was due on duty at 7 a.m. should have arrived much earlier at 5-55 a.m. The management was therefore justified in coming to the conclusion that he had come there so early to see the result of his activity of the preceding day, namely the transferring of the money from the table to the cup-board. Then, Raju was asked as to when he entered the room of Mr. Mackay and he said that he did so at 7-05 a.m. and to a further question he answered that there was nobody else inside the room then. That shows clearly that Raju had the chance of abstracting the currency notes from the cup-board on the morning of the 19th May about 7 O'clock and that was why when Mr. Mackay came to his office about 9 a.m. that day, he found the notes missing from the cup-board. Mr. Perianayagam's findings based on such evidence is not only not perverse but highly reasonable.

14. Mr. Bahulayan contended that peon Simon and one or two other workmen in the building had an equal opportunity to take away the money and not necessarily his client, Raju. I am unable to see anything in the evidence which may lead to this inference. None of the other workers had entered the office room of Mr. Mackay alone on the afternoon of the 18th May and none of them had entered it alone in the early hours of the morning of the 19th May. There is no evidence that they did so. If they had done so, it was clearly the duty of Raju to have elicited these answers from them and to have examined such of them as did enter the office room of Mr. Mackay at the relevant times on the 18th and 19th May, 1962. That he failed to do. In the absence of any such evidence, the contention of Mr. Bahulayan that somebody else might equally have made away with Mr. Mackay's money is not acceptable. I hold that the findings of Mr. Perianayagam as to the guilt of Raju is fair and reasonable on the evidence before him. It is certainly not perverse. Since this Court can interfere only if the finding is perverse, I am unable to and also decline to interfere with that finding.

15. It cannot be gainsaid that theft is a serious offence. I again agree with Mr. Perianayagam that a deterrent punishment was called for. The Management had lost confidence in their workman Raju on account of his thieving and the Manager, Mr. Vinayagam was perfectly justified in terminating the services of Raju.

16. For the reasons stated above, I hold on the only issue referred to this Court for adjudication that the termination of the employment of Sri C. Raju who was employed as a Sweeper in the Madurai Branch of the Pandiyan Insurance Company Limited was justified and that Sri Raju is not entitled to any relief. Consequently,

the petition is dismissed but in the circumstances of this case, I make no order as to costs. An award is passed accordingly.

Dated this the 1st day of March, 1963 at Madurai.

R. S. D. MANI,
Presiding Officer.

LIST OF WITNESSES EXAMINED

By the Worker:

W.W. 1 C. Raju (Petitioner/workman).

By the Management:

M.W. 1. H. Perianayagam.

M.W. 2. S. Sethuraman.

M.W. 3. P. V. Mackay.

LIST OF DOCUMENTS FILED

By the Worker:

W. 1. 29th August, 1962. Copy of Minutes of the conciliation held by the Conciliation Officer (Central) Madras.

By the Management:

M-1. 22nd May, 1962, Copy of charge memo given to the petitioner/workman.

M-2 22nd May, 1962. Copy of enquiry notice given to the petitioner/Workman.

M-3 23rd May, 1962. Explanation letter submitted by the Workman.

M-4. 23rd May, 1962. Enquiry proceedings.

M-5. 24th May, 1962. Letter by respondent sent to the workman returned refused.

M-6. 25th May, 1962. Letter by respondent sent to the workman returned refused.

M-7. 3rd July, 1962. Letter by respondent sent to the workman returned refused. (with termination order).

R. S. D. MANI,
Presiding Officer.

[No. 70(18)/62-LRIV.]

New Delhi, the 28th March 1963

S.O. 998.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Bombay, in the industrial dispute between the employers in relation to the All India General Insurance Co. Ltd., and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT BOMBAY

REFERENCE No. CGIT-13 OF 1962

Employers in relation to The All India General Insurance Co. Ltd.

AND

their workmen.

PRESENT:

Shri Salim M. Merchant, Presiding Officer.

APPEARANCES:

For the employers:

Shri N. V. Phadke, Advocate with Shri A. S. Asayekar, Advocate instructed by Shri M. Subba Rao, Advisor and Shri P. S. Parameshwaran, Secretary, The All India General Insurance Co. Ltd.

For the employees:

Shri Madan Mohan, Vice President, All-India Insurance Employees' Association, Calcutta with Shri K. S. B. Pillai, General Secretary, General Insurance Employees' Union, Bombay.

INDUSTRY: General Insurance. STATE: Maharashtra.

Dated Bombay the 22nd day of March 1963

AWARD

The Central Government, by the Ministry of Labour & Employment's Order No. 70(10)/62-LRIV dated 4th June 1962, made in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947), was pleased to refer the industrial dispute between the parties above-named, in respect of the subject-matter specified in the following Schedule to the said Order, to me for adjudication.

SCHEDULE

"Whether the demand of the employees for introduction of a gratuity scheme in the company should be accepted and, if so, what should be its provisions."

After the reference was made, the General Secretary, General Insurance Employees' Union, Bombay (hereinafter referred to as the union), filed a written statement of claim dated 1st October 1962 and the company filed its written statement in reply to the written statement of the union on 5th October 1962. The dispute was thereafter taken up for hearing and the hearing concluded on 21st February 1963.

The union has also relied upon the affidavit dated 21st November 1962 of Shri K. S. B. Pillai, its General Secretary to which the company replied by the affidavit of its Secretary, Shri P. S. Parameshwaran, dated the 29th November 1962.

Before dealing with the merits of the case, it is necessary to state that the dispute under reference concerns only the workmen employed in the head office of the company at Bombay, where the total number of permanent persons employed as on 1st October 1962 was 55, including officers. The company has branches at Coimbatore/Madras, Calcutta, Delhi, Nagpur, Ahemdabad and Hyderabad and the total number of persons employed in all these branches is another 45. In the over-all result, the company employs in all one hundred persons including 16 officers (see exhibit E5), of whom only the workmen of the Bombay Office are directly concerned in this dispute. I may also state that the employees of the Calcutta Branch of the company, numbering 8 workmen and 4 officers, had submitted a schedule of demands on the company including a demand for a scheme of gratuity but under the terms of an agreement dated 16th July 1962 (exhibit W-12), reached between the company and the union, the latter agreed *inter alia* not to press that demand for one year.

In 1956 the union had made several demands, including the demand for introduction of a gratuity scheme, and on 2nd January, 1957 a settlement was reached between the company and the union before the Central Government's Conciliation Officer at Bombay. On the demand for a scheme of gratuity, the settlement recorded as follows:—

"The question of laying down a scheme of gratuity is deferred and each case requiring payment of gratuity, if any, will be considered on merits.

Under the terms of a settlement dated 14th December, 1957, the demand for grantuity was deferred uptil 31st December, 1958 (Ex. W-18). Thereafter, by letter dated 5th February, 1959, the union in terms of the said settlement asked the company to enforce a scheme of gratuity to which the then General Manager of the company by his letter dated 12th August, 1959 replied denying that the company had agreed to introduce a scheme of gratuity by the end of 1958 and according to him the interpretation put by the union on that agreement was incorrect. The manager further stated that since that agreement was entered into, the company had received a warning from the Controller of Insurance for excess of expenditure incurred during 1959 and also received a show-cause notice for the year 1959. In view of these developments, the management stated that the existing position did not justify the introduction of a scheme of gratuity. He, however, went on to

assure the union that the introduction of a scheme of gratuity for the staff would receive the attention of the Board of Directors of the company when the company was in a position to bear the additional burden. Thereupon, the union by its letter dated 25th April, 1960 referred the dispute for conciliation to the Regional Labour Commissioner (Central) at Bombay. The main grounds urged by the union in support of its demand before the Conciliation Officer were (1) that in terms of the settlements dated 2nd January, 1957 and 14th December, 1957, the company had virtually agreed to introduce a scheme of gratuity by 1st January, 1959 (2) that in terms of the agreement dated 2nd January, 1957, the company had paid gratuity to some of its workers who had since retired, died or whose services had been terminated by the company (3) that the premium income of the company had increased appreciably since the agreement of 2nd January, 1957 and that the company was in a position to bear the financial burden of a scheme of gratuity for its employees at the Bombay Office and (4) that other general insurance companies in Bombay comparable to this company were granting the benefit of gratuity to their workmen. The management's position, however, was (1) that at the time of the previous settlement, no scheme of gratuity was considered (2) that though the premium income of the company had gone up its expenses had also gone up (3) that what it had paid subsequent to the agreement of 2nd January, 1957 to some of the workmen who had retired or died during the service with the company or whose services had been terminated by the company was not payment by way of gratuity but was payment on account of leave and other benefits and (4) that the company could not be compared to some of the companies mentioned by the union. The representatives of the management during the conciliation proceedings also urged that though the management felt that some sort of gratuity scheme should be provided for the employees, the present position of the company did not warrant the grant of any more benefits, but that it hoped to introduce such a scheme as and when the affairs of the company permitted. He further stated that in the year 1958 the company had made only a nominal profit of above Rs. 8,000/- and therefore the company should be given some time to make good and improve its financial position. As there was no settlement between the parties the Conciliation Officer submitted his Failure Report dated 27th June, 1960 (part of Exhibit B). It appears that the union again pressed the demand in 1961 and correspondence ensued between the union and the management and the matter was again taken up in conciliation by the Regional Labour Commissioner (Central) at Bombay, but once again no settlement could be reached and the Conciliation Officer, therefore, submitted another Failure Report dated 30th April 1962 (see Annexure D) after which the dispute was referred by Government for adjudication.

This company was established in the year 1944 with a share capital of Rs. 37,50,000/- and was transacting life and general insurance business. Since the nationalisation of life insurance business in the year 1956, the company has been left with the general insurance business only. It is admitted that the capital of the company was reduced to Rs. 10,00,000/- in 1953 due to losses suffered by it. It is further admitted that except in 1956 when the life insurance business was nationalised and in which year the company had declared a dividend of 3 1/8% to its shareholders, the company has not since its inception declared any dividend to its shareholders. The union, however, has pointed out that since 1958 the business of the company has been making steady progress in its net premium income position which is as follows:—

Year	Net premium income Rs.	Reserve Fund Rs.	Net profit Rs.	Loss Rs.
1958	12,96,541/00	6,15,485/00	8,338/00	Nil
1959	14,64,669/00	7,23,032/00	8,542/00	Nil
1960	20,44,801/00	10,48,331/00	10,678/00	Nil
1961	22,03,306/00	11,52,682/00	13,007/00	Nil

The union, in its written statement, has also referred to the fact that the company's business has been expanding and that it has branches at various centres in India and now has agency offices at Colombo and London. It has also referred to the increasing number of employees engaged in recent years by the company in its head office and branches which according to it indicates the increased business and consequent prosperity of the company. The union has urged that the amount of low net profit as shown in the balance-sheet and Profit and Loss Account for the year 1961 has been mainly due to the large reserves which the company has been making in recent years.

The union has further urged that the burden of a scheme of gratuity as demanded by it or as is generally in force and applicable to general insurance business offices in Bombay would be very small on this company and it has filed various statements in support of this contention. The union has relied upon the judgment of the Hon'ble Supreme Court in the case of Sone Valley Portland Cement Co. (1962 I L.L.J. p. 218 at p. 221) and has urged that in assessing the burden of the gratuity scheme on the company, the Tribunal should take the practical aspect and calculate the burden on the basis that not more than 3 to 4 per cent of the employees would retire from service each year. It is argued that if the practical approach as laid down by the Supreme Court is adopted the burden of providing a scheme of gratuity for the workmen (excluding officers) employed in the Bombay Office of the company would be a very small, and one which the company would easily be able to bear.

On behalf of the company, Shri Phadke, its learned counsel, on the point of the financial position of the company has urged that this company cannot bear the financial burden of a scheme of gratuity for its workmen and he has in support urged the following facts:—

(a) that the company was originally started in 1944 with a share capital of Rs. 37,50,000/- which was reduced to Rs. 10,00,000/- in 1953; that this reduction in capital was due to the losses suffered by the company which it has never been able to recoup;

(b) that the company has not declared any dividend for its shareholders except the dividend of 1/8% declared in 1956;

(c) that the company has no general reserves which are necessary for proving financial stability before a scheme of gratuity can be awarded for the benefit of its workmen;

(d) that the company has been exceeding the expense ratio and that warnings had been received by it from the Controller of Insurance to keep its expenses within the limits prescribed by section 40C of the Insurance Act, 1938;

(e) that the fact that the company's profit and loss accounts show small profits, do not really disclose a state of prosperity and that if a scheme of gratuity is awarded, the company would have to show in its balance-sheet the full contingent liability thereunder and this would affect the credit which the company enjoys with banks; and

(f) that each year during 1957 to 1961, the trading results of the company had resulted in a loss but the situation was saved by income by way of interest on investments.

In short, what Shri Phadke, has argued is that the activities of the company are carried on because of the income from the investments, and that the position was not that investments were being made because of the company's business activities and in support of this he has relied on letters received by the company from the Controller of Insurance, copies of which the company has annexed to its written statement. He has argued that but for the reserves in the form of existing investments (particulars of which the company has shown in a statement prepared by it—Ex. E-14), the company would not have been permitted to carry on its business.

On these pleadings, the first question to be determined is whether the company has the capacity to bear the financial burden of a scheme of gratuity for its workmen.

It is now well settled that where a concern has the necessary financial stability, the workmen are entitled to the double retiral benefits of provident fund and gratuity. The Supreme Court in the case of the Gujerat Engineering Co. and the Ahmedabad Miscellaneous Industrial Workers' Union (1961 2 LLJ p. 660) has laid down that two retirement benefits could be allowed if the financial position of the business justifies them, particularly so when the scheme of contributory provident fund was introduced comparatively recently. In this company, as stated earlier, the provident fund scheme was introduced, comparatively recently, only in 1956. Shri Phadke has referred to the decision of the Labour Appellate Tribunal in the case of Boots Pure Drug Co. (India) Ltd. and their workmen (1956 1 L.L.J. p. 293) where it is laid down that the grant of a scheme of gratuity is a long term policy and must depend upon the capacity of the employer to pay on a long-term basis.

A mere temporary prosperity or adversity of the employer is not to be taken into account in deciding such long-term schemes, as the financial position of a concern cannot be considered as bad simply because of some temporary difficulties in the immediate past or present. If the financial position of the employer in its broad aspect is found to be sound and there is a reasonable probability of the concern making profits in the future as would give at least a fair return to the capital invested after allowing the building up of the necessary reserves required for a business run on sound commercial lines, a scheme for gratuity can be framed. But in that case, as the company's financial position was highly unsatisfactory and it had not been able to pay dividend to its shareholders due to losses and there was nothing to show that its financial difficulty was only temporary, the Labour Appellate Tribunal rejected the demand for a scheme of gratuity. The factors to be taken into account in determining the financial position of a company have been stated by the Supreme Court, in the case of Bharatkhand Textile Manufacturing Co. Ltd. *viz* Textile Labour Association, Ahmedabad (1960 II LLJ p. 21) and in that judgment the view taken by the Labour Appellate Tribunal in the cases of (1) Boots Pure Drug Co. (India) Ltd. (1956 I LLJ P. 293) and (2) The Indian Oxygen & Acetylene Co. Ltd. Employees' Union *vs.* The Indian Oxygen & Acetylene Co. Ltd. (1956 1 LLJ p. 435) were approved. The decision of the Labour Appellate Tribunal in the case of the Indian Oxygen & Acetylene Co. Ltd. was also referred to with approval by the Hon'ble Supreme Court in the case of the Express Newspapers (Private) Ltd. and Another *vs.* the Union of India and Others (1961 1 LLJ p. 339 at page 397). In the case of Indian Oxygen & Acetylene Co. Ltd., a Bench of the Labour Appellate Tribunal had summarised the factors to be taken into account in determining the financial capacity of the concern to pay gratuity, in the following terms:—

> "It is now well settled by series of decisions of the Labour Appellate Tribunal that where an employer company has the financial capacity, the workmen would be entitled to the benefit of gratuity in addition to the benefit of provident fund. In considering the financial capacity of the concern what has to be seen is the general financial stability of the concern. The factors to be considered before framing a scheme of gratuity are the broad aspects of the financial condition of the concern, its profit earning capacity, profit earned in the past, its reserves and the possibility of replenishing the reserves, the claim of capital put in having regard to the risk involved, in short, the financial stability of the concern."

In the case of D.C.M. Chemical Works and its workmen (1962 I LLJ p. 388 at p. 390), relied upon by the union, the Supreme Court upheld the Award of the Industrial Tribunal which granted the workmen the benefit of a scheme of gratuity though it found that the financial position of the concern was not good and stable enough to warrant an incremental wage structure. However, considering the fact that the chances for the future prosperity of the concern were not in doubt and the fact that the burden of such scheme would not be much taking the practical view of the matter that the number of retirements would be between 3 to 4 per cent of the total strength, their Lordships of the Supreme Court held that the view of the Industrial Tribunal in granting a gratuity scheme to about 800 workers of the company similar to the one in force for the benefit of the clerical staff of the concern, was not unjustified.

In the case of Sone Valley Portland Cement Co. (1962 I LLJ p. 218 at page 221) Their Lordships of the Supreme Court in considering how the financial burden of a scheme of gratuity should be assessed, observed as follows:—

> "As was pointed out by this Court in the case of Bharatkhand Textile Manufacturing Co. Ltd. *vs.* the Textile Labour Association (1962 I LLJ p. 21 at page 30) there are two ways of looking at this matter of the burden of a gratuity scheme. One is to capitalise the burden on actuarial basis and that would naturally show theoretically that the burden would be heavy. The other is to look at the scheme with respect to its practical aspect and that shows that generally speaking not more than 3 to 4 per centum of the employees are retiring each year. If the burden is calculated on the basis of this practical approach, as it should be, there is in our opinion no reason to interfere with the view of the Tribunal that the company can bear this burden. We, therefore, see no reason to disagree with the Tribunal that the company would be able to bear the burden of the scheme in addition to the provident fund scheme as already in force".

In view of the above decisions, the first question to be determined is whether the company has the financial stability to bear the burden of a scheme of gratuity and in determining the financial burden we must not take a theoretical aspect, but a practical one.

No doubt, the company has had to suffer heavy losses in the past and it has not been able to pay any dividend to its shareholders but there is not the least doubt from the figures cited by the union that the company's premium income has been going up steadily each year since 1958. In 1961, the premium income of the company was almost double than that in 1958. The company has argued that only its income from its investments have enabled it to show a small profit during these four years and that but for this income, the actual trading results had shown a loss. But the union has pointed out that the company would have been able to show fair profits but for the fact that it has been making additional provision towards its reserves. In this connection the union has filed a statement (exhibit W. 6) showing the following particulars of the additional reserves provided by the company during 1958 to 1961:—

	1958	1959	1960	1961
	Rs.	Rs.	Rs.	Rs.
Fire	15,804/60	17,389/82	23,706/91	23,486/46
Marine	5,488/72	5,600/44	7,109/17	5,102/95
Misc.	7,930/74	9,663/38	14,345/44	18,538/49
	29,224/06	32,653/64	45,161/52	47,127/90

The union has stated that these additional reserves had been provided by the company at the rate of 2 per cent in case of Fire and Misc. Departments and 5 per cent in Marine Department, of the premium income, in accordance with the undertaking given by the company to the General Insurance Council to raise the reserves to 50 per cent of the premium as reserves for the unexpired risks in the case of Fire and Miscellaneous and 100 per cent of the premium income in the case of Marine Department. The union has argued that in the absence of this undertaking these amounts would have formed part of the profits of the company. The union has pointed out that the company will now not be required to provide any additional reserves in future balance-sheets and as such the profit of the company must increase by about Rs. 50,000 per year on this amount alone, if there is no further rise.

This appears to be so, as Shri Ramnad Anandilal Podar, the Chairman of the Company, at the company's annual general meeting held on 25th May 1962, in presenting the reports of the Directors and Audited Statements of Accounts for the year ended 31st December 1961 (Ex. W-16), observed as follows:—

> "In accordance with the undertaking given to the Executive Committee of the General Insurance Council the company has provided 50 per cent of the premium as reserves for unexpired risks in the Fire and Accident Departments and 100 per cent of the premium income in the Marine Department. The net increase in the reserves when compared to the previous year amounted to over Rs. 1 lakh. It is indeed a satisfaction that we have been able to fulfil the undertaking by our company to provide the necessary reserve, as required by the provisions of the Code of Conduct. If this extra provision was not required to be made the profit and loss account would have shown a further surplus of Rs. 47,000".

Referring to the position of the company for the year under review, Shri Podar also observed:

> "The year under review has been a period of consolidation for the company. With the increased tempo of industrial activities under the Third Five-Year Plan, the general insurance premium in the country is bound to show a steady rise. Your Directors are hopeful that the company will obtain a share of the increased premium. We should, therefore, look forward with confidence for better working of the company in future".

The profit and loss account of the year 1961 also showed that the total gross Indian and foreign premium income earned by the company in 1961 amounted to

Rs. 30,21,069, as against Rs. 25,70,781 in 1960 and that the total expenses of the management incurred in 1961 was Rs. 9,51,865 as against Rs. 8,21,541 in the previous year. The Chairman whilst drawing attention to the fact that against the increase in the premium income of Rs. 4,50,288, the additional expenses incurred had amounted to Rs. 1,30,324, noted with satisfaction that there had been a slight fall in the expense ratio during the year when compared to the previous year.

The company has also argued that its ratio of expense was tending to go up and that it had received warnings from the Controller of Insurance for exceeding the expence ratio beyond the limits laid down by section 40C of the Act. I do not think that that would be a reason for refusing the workers' demand for gratuity if it otherwise felt justified. In this connection the union has filed a statement (exhibit W-15) giving particulars of 25 groups of insurance companies in Bombay, covering a large majority of the units of general insurance companies in Bombay, out of which as many as 21 had exceeded the expense ratio prescribed by rule 40C of the Code of Conduct. The statement relates to the two years 1959 and 1960 and gives the particulars of the expense ratio regarding the Fire, Miscellaneous and Marine Departments, of each of these companies.

But what is more important is that the union has also proved that a large majority of these companies, which have exceeded the prescribed expense ratio, are paying gratuity under schemes of gratuity which have either been fixed by awards of Industrial Tribunals or which were agreed to under the terms of settlement reached between those companies and the unions representieng their workmen. The union has also given the particulars of the schemes of gratuity, as existing in a large number of these companies with offices in Bombay (Exhibit W-3).

The union has also filed a statement (exhibit W.5) showing the bank limits prescribed by various banks with regard to the policies of these companies. The union has also relied upon a statement (exhibit W.8) showing that the assets of the company exceed its liabilities by Rs. 12,60,228. The company has filed a statement correcting the statement of the union but even the statement filed by the company (Ex. E.18) shows that as on 31st December 1961, the assets of the company were higher by Rs. 9,59,457.00 over the liabilities. Shri Phadke has argued that this merely shows that the company is solvent to carry on its business and that it does not establish the company's financial stability.

I have given careful consideration to the submissions of the union and the management on the question of the financial stability of the company and I am satisfied that by and large the concern is now in a financially stable condition and that it can, as has been stated by its Chairman, Shri Ramnad Anandilal Podar, at the last annual general meeting of the shareholders held on 25th February 1962, look forward to a more prosperous future. In my opinion, as in the case of the D.C.M. Chemical Works (1962 I LLJ at p. 370) the chances of the future prosperity of the company are not in doubt. I am, therefore, satisfied that the company has the necessary financial stability to grant its workmen the benefits of a scheme of gratuity.

It is significant to note that the company, in the settlement dated 2nd January 1957, reached during conciliation, on the demand for a scheme of gratuity had stated as follows:

> "The question of laying down a scheme of gratuity is deferred and each case requiring demand of gratuity, if any, will be considered on merits",

and under the terms of the later settlement, dated 14th December 1957, the demand for a scheme of gratuity was deferred until 31st December 1958. The union has argued, and I think with some substance, that by the terms of these two settlements the company had virtually conceded that it would frame a suitable scheme of gratuity in the near future, and, in the meantime it had agreed to consider the claim of individual workmen for payment of gratuity, as and when they would arise.

The union has, in this connection, stated that the management in fulfilment of the assurance contained in the terms of the aforestated settlement dated 2nd January 1957, paid gratuity to certain workmen whose names it had mentioned. The management by the affidavit of its Secretary, dated 29th November 1962, has strongly refuted this suggestion. It has given an explanation as to how it came to make these payments, which the union alleged were payments made by way of gratuity in terms of the settlement, dated 2nd January 1957. The interesting fact,

however, remains that the company admits that it paid one Shri M. N. Vora, who agreed to retire from the company at the company's request, a sum in addition to what he was entitled to from the company under the terms of his contract of service with the company. The company has stated that it paid a small additional amount by way of "appreciation of the meritorious services rendered by Shri Vora to the company during very difficult times." The same element appears also in the payment made to another employee, *viz.* Shri P. K. Vishwanathan. It is also admitted that the company had paid the mother of another old employee, Shri L. D. Mawji, who died whilst in service, a sum of Rs. 1,200 in recognition of his services with the company. It is also admitted that the company has been granting a pension to one of its managers, one Shri M. Subba Rao and that he has been re-engaged in service as Adviser to the company on a substantial salary. The significant point is that though the union has not been able to establish that all these payments were by way of gratuity, the same were made after the settlement of 2nd January 1957. There is, therefore, scope for the suggestion that these payments included an element of gratuity as the amounts paid were in excess of the contractual obligations of the company.

The next question, therefore, before determining whether a scheme of gratuity can be awarded, is to consider what would be the financial burden on the company of a reasonable scheme of gratuity. After the decision of the Hon'ble Supreme Court in the case of Sone Valley Portland Cement Co. (1962 I LLJ p. 218 at p. 221) there can be no question that the proper method of assessing the burden would be to adopt the practical method stated therein *i.e.* on the basis of 3 or 4 per centum of the workmen retiring from service during each year. The company has filed a statement showing what would be its liability for payment of gratuity as on 1st October 1962 on the basis of the demand made by the union in respect of its employees in all its offices, who had completed 10 years' service, and this burden has been shown as being Rs. 1,26,153.20 nP. (Ex. E-2). But that can now no longer be taken as the proper method of assessing the contingent burden and the proper course would be to adopt the practical method laid down by the Hon'ble Supreme Court. Besides, this statement cannot be accepted as a proper assessment of the burden on the company as I am not adopting the rate of gratuity demanded by the union, and am also making gratuity payable-except in the event of death or disability on the basis of the workmen concerned having put in a certain period of qualifying service.

I may, at this stage, as well dispose of a controversy between the parties as to whether the financial burden should be calculated on the basis of a scheme of gratuity being applicable to all the employees of the company including its officers in the head office and various branch offices of the company or whether it should be calculated only on the basis of all the workmen, excluding the officers, employed by the company. This demand has been made on behalf of the workmen employed in the Bombay Office of the company and I can, therefore, adjudicate upon it only in respect of the Bombay Office employees. In my opinion, in determining this dispute, strictly speaking, only the burden that would be imposed upon the company if a scheme of gratuity applicable to the workmen employed in its Bombay Office only were to be awarded. The demand has not been made on behalf of the officers of the company and in calculating the burden I am excluding that the burden would be upon the company if the benefit were granted to the officers, because I feel that if by including officers the workers are to be denied a scheme of gratuity then the officers should be excluded, at least for the present, from these benefits. I shall, therefore, confine the calculation of the annual probable burden, on the basis of the scheme of gratuity being made applicable only to the workmen employed by the company at its head office.

Now, in determining the probable annual burden on the company by way of gratuity, the company has filed a statement (Ex. E-21) showing that between 1958 and 1962 in all 6 of its employees left the services of the company either by way of their having died whilst in service of the company (2 cases) or their services having been terminated (4 cases) I had directed the company to give me a statement of what would be the burden by way of gratuity in respect of these workmen on the basis of a scheme of gratuity which I had earlier awarded in the case of Hercules Insurance Co. Ltd., where a much restricted scheme of gratuity was awarded than has been claimed by the union in this dispute. I must say that a large number of medium group insurance companies in Bombay have adopted the scheme of gratuity awarded by me in the case of the Bombay office of the Hercules Insurance Co. Ltd. [Government of India Gazette, Part II, Section 3(ii), dated 23rd April 1960 at pp. 1305 to 1424]. Now, on the basis of that scheme of gratuity, the company would have been liable to pay to the six workmen shown in its statement (exhibit E-21) a total sum of Rs. 28,065 by way of gratuity. Of the 2 employees who died whilst in service during this period of 5 years one was

Shri P. V. K. Shanmugam, a General Manager, who had put in 17 years' service and who was on the date of his death drawing a basic salary of Rs. 1,650. Calculating the amount of gratuity on the basis of 15 months' salary, the gratuity which would have been payable to him has been calculated at Rs. 24,750. He was undoubtedly an officer of the company, being its General Manager, and not a workman as defined by the Industrial Disputes Act, 1947. Therefore, the position was that out of the total amount of Rs. 28,063 which would have been payable by way of gratuity if the scheme of gratuity as awarded in the case of Hercules Insurance Co. Ltd., had been in force, the company would have had to pay during the 5 years 1958 to 1962, to the remaining workmen gratuity amounting to only Rs. 3,315 *i.e.* about Rs. 663 per annum which works out to a liability of about Rs. 50 per month by way of gratuity.

The union has, however, filed a statement (Ex. W-17) giving particulars of 7 workmen, who according to it, left the services of the company between 1958 to 1961, and it has shown what would have been the amount of gratuity payable to them on the basis of the award in the case of Hercules Insurance Co. Ltd. The union has confined its calculations to those who would have completed the prescribed number of years of service before they could have been entitled to payment of gratuity and according to the union's statement under the scheme of gratuity awarded in the case of the Hercules Insurance Company's award, the burden upon the company would have been Rs. 26,700, if the case of Shri Shanmugam, the General Manager of the company, who would have been entitled to payment of gratuity of Rs. 24,750, were to be included. If however, his case were to be excluded, the burden of gratuity calculated for the remaining 6 workmen would have amounted to only Rs. 2,040, during the four years 1958 to 1961, *i.e.* to Rs. 508 per year, which would work out to about Rs. 43 per month. If, however, the burden were to be calculated on the basis of an award made in the case of General Assurance Society Ltd. the burden for the 4 years would be Rs. 9,626 *i.e.* Rs. 2,407 per year and about Rs. 200 per month.

Both parties have also filed other statements making calculations on a practical basis, but the burden, even on those calculations, is so small that I have no hesitation in holding that the company can easily bear the burden of the scheme of gratuity which I propose to award. The union has pointed out that there are a large number of medium group insurance companies in Bombay having about the same gross annual premium income as this company who are granting its workmen in Bombay the benefit of a scheme of gratuity. It is also pointed out that if the scheme of gratuity awarded in Hercules Insurance Co. Ltd., were to be awarded to the company the annual burden of it would amount to much less than 1 per cent of the annual gross premium income and that the company was spending much more than that on entertainment and conveyance expenses.

With regard to the terms of the scheme of gratuity, in my opinion, the scheme of gratuity as claimed by the union is unjustified because what the union wants is that in the event of death, disability, voluntary retirement, retirement on superannuation and in the event of termination of services by the company, gratuity should be payable at the rate of one month's total salary per each completed year of service. By total salary, the union means basic salary plus dearness allowance and other allowances, if any, paid by the company. In my opinion, such a scheme is not justified and the company would not be able to bear its financial burden. In the schemes of gratuity generally in force in general insurance companies in Bombay, gratuity is calculated on basic pay and has a ceiling limit of 15 months' basic salary wages.

I have considered the various scheme of gratuity at present in force in comparable units of the general insurance companies at Bombay and I am of the opinion that under the facts and circumstances of the case, the following scheme of gratuity would be a fair and reasonable scheme of gratuity to award and I direct accordingly:—

(a) On the death of an employee whilst in the service of the company or on his becoming physically or mentally incapable of further service.	1 month's basic pay or salary for each year of completed service, to be paid to the disabled employee or if he has died to his heirs, executors or assigns or legal representatives with a maximum of 15 months' basic pay or salary.
(b) On retirement on reaching the age of superannuation after 10 years' completed service.	½ month's basic pay or salary for each year of completed service with a maximum of 15 months' basic pay or salary.

(c) On voluntary retirement or resignation of an employee after 15 years' completed service.	½ month's basic pay or salary for each year of completed service with a maximum of 15 months' basic pay or salary.
(d) On termination of the services by the company, after 10 years' completed service.	½ month's basic pay or salary for each completed year of service, with a maximum of 15 months' pay or salary.

(e) Salary for the purpose of computing gratuity shall be the average of the basic pay or salary drawn during the period of twelve months prior to the occurrence of the event entitling the workmen to the payment of gratuity.

(f) In the event of termination of service for misconduct resulting in financial loss to the company the amount of the financial loss so caused shall be deducted by the company from the amount of gratuity payable.

The scheme of gratuity shall come into force from the date the Award herein become enforceable and for payment of gratuity all the past services of the employee with the company shall be taken into account.

The scheme of gratuity awarded herein shall be applicable only to the workmen in the service of the company in its head office at Bombay on or after the date the scheme of gratuity comes into force.

As the workmen have substantially succeeded in their demand, I award Rs. 150 as costs to the union.

SALIM M. MERCHANT,
Presiding Officer,
[No. 70(10)/62-LRIV.]

New Delhi, the 29th March 1963

S.O. 999.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Lucknow in the industrial dispute between the employers in relation to the S. S. Light Railways, Saharanpur and their workmen.

BEFORE THE INDUSTRIAL TRIBUNAL (I), AT LUCKNOW.

Present: Sri J. K. Tandon, Presiding Officer

ADI. CASE NO. 2 (CENTRAL) 1962.

In the matter of an industrial dispute between M/s. Shahdara Saharanpur Light Railways, Saharanpur.

Vs.

APPEARANCES:

For the employers—

(1) Sri A. Chakraborti, Asstt. Personnel Officer, Martin's Light Railways.

(2) Sri S. K. Mullick, Lawyer, Sanderson & Morgan, Calcutta.

For the workmen.—

(1) Sri Y. D. Sharma, Vice President, S. S. Railway Workers' Union, Delhi-Shahdara.

(2) Sri Ghanshyam Saran Sinha, Secretary, U.P. Trade Union Congress, Kanpur.

Industry: Railway.

District Saharanpur.

Dated March 22, 1963

The present reference by the Central Government is under Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947). The dispute referred for adjudication is thus:—

"Whether the existing rates of dearness allowance paid to the employees of the S. S. Light Railway are adequate? If not, to what extent these should be enhanced?

2. The following history may be necessary to appreciate fully the points at issue. The Shahdara (Delhi) Light Railway Company Ltd., own and operate the railway system known as Shahdara Saharanpur Light Railway between Saharanpur and Shahdara (Delhi) in the Western Region of Uttar Pradesh. The Railway line has one terminus at Saharanpur and the other at Shahdara next door to Delhi. M/s. Martin Burn Ltd. being the Managing Agents of the said Railway Company are operating the Railway system.

3. The claim of Dearness Allowance, which is the subject matter of the dispute here also, has been so on more than once as appeared from awards and agreements recorded on several occasions in the past. In August, 1944 Sri Abdul Shakur, a Labour Officer, made one such award, and one of the points decided by him was that the workers of the S.S. Light Railway would get Dearness Allowance on the same scale as may be in force from time to time in the North-Western Railway. His award also required that the S. S. Light Railway, Administration shall make available to its employees throughout the length of the line from Saharanpur to Shahdara cheap grains at the rates charged by the North Western Railway and in the quantities fixed by the Rationing Authorities of Saharanpur, as also other essential commodities supplied by the North Western Railway at the same rates and in the same quantities. After the partition of the country part of North Western Railway has gone to Pakistan and the portion situate in India is presently known by the name of Northern Railway.

4. In February 1948 consquent upon a fresh demand by the employees of S. S. Light Railway and of certain changes effected by the State Railways in cheap grain concessions, the following modification (as they have been called) were mutually effected in the scheme of Dearness Allowance applicable to the employees of the S. S. Light Railway. They were:—

(1) That the cash allowance will continue to be the same as was then payable.

(2) That the grain concessions as then granted will also continue with the modification that certain commodities included in the list of articles to be supplied at concessional rates will be taken out of the list, and

(3) A sum of Rs. 5/- p. m. will be paid to each employee with effect from 1st July, 1947 in lieu of commodities so withdrawn, and this payment will continue at least for a period of two years minimum upto June 30, 1950 even if the supply of commodities at concessional rates was discontinued by the State Railways in the meanwhile.

5. Yet a change was effected in the structure of Dearness Allowance in December 1951 by a mutual agreement on 2nd December 1951. The grain shop concessions were partially withdrawn with effect from 1st January 1952 as the employees were authorised to draw their quota of grains according to the scale fixed by the Government from time to time not at concessional rate but at cost, while the following scale of Dearness Allowance in cash was laid down:—

Pay	Dearness Allowance
Upto Rs. 50/-	Rs. 40/-
Rs. 51/- to Rs. 100/-	Rs. 50/-
Rs. 101/- to Rs. 150/-	Rs. 55/-
Rs. 151/- to Rs. 200/-	Rs. 60/-
Rs. 201/- to Rs 250/-	Rs. 65/-

6. The next increase in Dearness Allowance took place in 1959. We are aware that the Central Goxernment appointed a Second Pay Commission in August 1957. The conditions of service and the structure of emoluments of employees on State Railways were also included in the task entrusted to the Commission. In December, 1957 the Commission submitted an Interim Report recommending an increase of Rs. 5/-, as an interim measure, in the cost of living allowance admissible to certain categories of Central Government employees. When the said recommendation was enforced by the Central Government, the employees of the S. S. Light Railway also raised a demand for similar increase, and ultimately it became the subject matter of a Reference under Section 10 of the Industrial Disputes Act, 1947. A copy of the Reference Order is Ex. W-1. The demand of the workers was that in the matter of Dearness Allowance they were entitled to be at par with the employees of the Central Government, hence a similar increase had to be given to them also. This dispute ended in an award dated 13th October, 1959 reached

between the parties. Since this agreement will be referred to in the course of discussion later and there is controversy about its true meaning and scope, it is worthwhile to reproduce it *in extenso*:—

"(1) The financial position of the Railway was discussed at length, and upon such discussion it was agreed that with effect from 1st April, 1959:—

(a) The present scale of D. A. of all staff of the Railway in all stations including Shahdara & Saharanpur shall be increased Rs. 3/- (rupees three only), and the position will be reviewed at the end of one year *i.e.* in September 1960 or earlier if the financial position permits.

(b) This agreement is without prejudice to the contention of the parties regarding admissibility of Indian Railways Scale of D. A. on S. S. Railway.

(2) No dispute now exists between the parties in the matter and the company and the Union jointly pray that this Tribunal will therefore be pleased to record the terms of settlement and pass a no-dispute award."

7. On submission of the final recommendation of the Central Pay Commission a further increase of Rs. 5/- was allowed substantially in the Dearness Allowance to the employees of the Central Government. This was over and above the increase of Rs. 5/- given earlier in pursuance of interim recommendation and was with effect from 1st July, 1959. And with effect from 1st November, 1961 the Central Government gave yet another increase of Rs. 5/- in the D. A. admissible to its employees. These two increases, one following the final recommendation of the Pay Commission, and the other independently of it in 1961 have not been followed by any corresponding increase in the emoluments of the employees of the S. S. Light Railway. The result is that the emoluments of the latter are presently less by Rs. 12/- than the amount drawn by an employee of the State Railway.

8. The above facts are not controverted. The case of the workmen now is that they are entitled as part of their condition of service to the same Dearness Allowance as servants of the State Railways which they are not being paid. They have accordingly asked an increase of Rs. 12/- p. m. in the amount presently paid to them. Alternatively, they have alleged that the cost of living too has gone up; in fact is continuously going up day after day, consequently also they are entitled to an increase in the D.A. sufficient to neutralise the higher cost of living.

9. The management does not accept that it is a condition of service of their workmen that Dearness Allowance admissible to them shall be at par with that admissible to employees of State Railways. Ard, *inter alia*, pleads that the company has for some time past been suffering losses due to road competition with the result that it is financially unable to meet the heavy burden which will follow any increase in the Dearness Allowance. It is opposing the claim for increase in the Dearness Allowance on the ground that the agreement dated 13th October, 1959 (hereinafter referred to in this award as Krishna Murti's award) has not been terminated by any party so far so that it bound the parties even now. On this particular question the workmen's answer is that since the agreement of October 13, 1959 was for the interim period only the same has faded out and its termination specifically was unnecessary.

10. The following issues were, therefore, framed in the case:—

(1) (a) Is the present Reference incompetent and illegal because the agreement dated 13th October 1959 has not been terminated?

(b) Was the said agreement for the interim period only, did it on that account not require specific termination?

(2) Whether the employers should in view of the increase in D.A. granted by the Central Government grant a similar increase to their staff as well?

(3) Whether it is not feasible having regard to the working results of the Co. to award any increase in the Dearness Allowance? Is the present rate of D.A. inadequate?

FINDINGS

Issues 1(a) *and* 1(b).

11. It was stated earlier that the settlement dated 17th October, 1959 was affected after the relative dispute had been referred by the Central Government

to the Industrial Tribunal at New Delhi. The said Reference was made on 30th of June, 1959 while the matter of dispute was thus:—

> "Whether the workmen of Shahdara Saharanpur Railway, Saharanpur, are entitled to interim relief of Rs. 5 per month with effect from 1st July 1957, as sanctioned for the employees of Railway administered by the Government?"

12. We have noticed that consequent upon the submission of the interim report by the Second Pay Commission, the Central Government awarded interim relief to its employees by allowing an increase of Rs. 5 per month in the Dearness Allowance with effect from July 1, 1957. Because the said increase was granted to its employees by the Central Government, the employees of the S.S. Light Railway made a similar demand for them also. This dispute as is necessary to stress was still pending before the concerned Tribunal when the settlement of 17th October, 1959 was arrived at.

13. The employers' contention is that the above settlement disposed of the workers' claim for increased Dearness Allowance not merely for the interim period, that is, till the final recommendation of the Second Pay Commission was out and given effect to, but completely so far as the whole demand for the Dearness Allowance was then existing. In other words, they dispute that the purpose of the settlement was confined to the limited question of the interim relief only. The workers, on the contrary, claim that the question of the total Dearness Allowance was not settled thereby but it was done so to the extent only as to what interim relief needed to be allowed to the workers of S.S. Light Railway also in the background of the interim relief given to employees of State Railways.

14. A combined reading of the Order of Reference, Ex. W-1, and Krishna Murti's Award, Ex. W-2,—the latter incorporated the settlement also dated 17th October, 1959—left no doubt that what was decided was indeed the matter of interim relief to be given to these workmen. The settlement deserved to be read and construed in the background of the proceedings which were started and were then pending before the Industrial Tribunal. The opening paragraph of the settlement clearly contained that what had been settled by the parties was "the dispute over the dearness allowance of Rs. 5 on account of interim relief referred to the Tribunal for adjudication". There is no scope for any doubt, after this statement in the settlement, that the latter disposed of the limited question of interim relief to be given. It is not possible to read in the settlement any intention by the parties to dispose of the question of the final increase in the dearness allowance in contrast with the interim relief as then given to the employees of State Railways. The learned representative for the management argued that while arriving at the above settlement the parties discussed at length the final position of the Railway; he also relied on Para 2 of the settlement which said that no dispute remained between the parties thereto in the matter, and the conclusion, which he would derive from the said statement in the settlement, is that the whole, and not the limited question of interim relief alone, was settled. I do not think this is correct. Para 1 of the settlement clearly mentioned that the dispute was settled and this was repeated in Para 2 when the parties stated "no dispute now exists between the parties in the matter" (The underlined is mine). The fact that in arriving at the settlement the parties discussed at some length the financial position of the Railway made no difference so far as the subject matter of the settlement was concerned which clearly was limited to the matter then before the Tribunal. And since this was with respect to the interim relief only, I have no doubt that the settlement and so the Award also disposed of the dispute in respect of intrim relief only.

15. The question for consideration now is whether the same required to be terminated before the workmen could ask any increase in their dearness allowance. In this connection, it may be pointed out that when the Second Pay Commission submitted its recommendations to the Central Government, the latter as a result of those recommendations increased the emoluments of its servants including employees on State Railways. Over and above the interim relief of Rs. 5, a further increase of a similar amount was allowed to them. In 1961 the Central Government awarded yet another increase of Rs. 5 to its employees. Here it will be useful to state one fact. Pursuant to the recommendations of the Second Pay Commission a substantial portion of the dearness allowance admissible to the Central Government employees was incorporated in their basic salary. As a result, though the total emoluments (including the dearness allowance both granted in the shape of interim relief and granted finally) recorded a total increase of Rs. 10 per month, the split up between basic pay and

Dearness Allowance underwent a change. The portion of basic salary became larger with a corresponding decrease in the amount of dearness allowance. It will be necessary to advert to it later.

16. To turn now to consider the management's objection under these issues, their contention briefly is that the settlement of 17th October, 1959, since it was not terminated by either party by a notice, continued to bind the parties, who were, therefore, debarred from raising the dispute. It does not seem necessary to examine the above contention from the standpoint whether any notice was actually needed under the law to terminate it. The reason is that if the settlement itself was confined to the limited dispute on account of interim relief, the same exhausted itself once the interim period was over. There was nothing left to be terminated. Admittedly, the interim period expired with the enforcement of the final relief following the final recommendation of the Second Pay Commission. The settlement, therefore, rant out and exhausted itself by its very nature. There was no necessity thereafter to terminate it being no longer alive and existing.

17. I am, therefore, unable to hold that the absence of a termination notice by the workers disentitled them from raising the demand for dearness allowance or that the Central Government were incompetent to refer it for adjudication.

18. Issues decided accordingly.

Issues 2 and 3.

19. The workers' claim for increased dearness allowance is founded on two grounds. One ground urged on their behalf is that the cost of living itself has gone up considerably since their basic wages were fixed, consequently they are entitled to increased dearness allowance to neutralize the rise in prices. The second ground is that it was a condition of their service that they shall be paid dearness allowance at the same rate as the employees of State Railways but the amount they were getting was higher by Rs. 12 per month than the amount admissible to them.

20. Dearness Allowance is a feature which prominently entered the wage structure in different employments, whether under the Government or in private sector consequent upon abnormal rise in prices of essential commodities during and after the First World War. Whenever there has been an appreciable rise in the cost of living, the emoluments of a wage earner have sought to be supplemented by grant of dearness allowance. Indeed, this allowance is "a device to protect, to a great or lesser extent, the real income of wage earners and salaried employees from the effects of rise in prices". It is not necessary that the allowance is always equal in extent to the rise in prices. Sometimes it is on a tapering rate and at other times it is admissible upto specified grades only. The reason is that the allowance is intended to protect the real income of a wage earner from the effects of rise in prices to the extent this is consequently possible with other relevant considerations. Thus, the allowance is intrinsically in the nature of a compensatory allowance intended to neutralise in some degree the effects of rise in prices. Through this device the real income of a wage earner is protected to an extent. For this reason the allowance is not materially different than the wage itself. The broad considerations which apply in wage fixation, therefore, apply in an appreciable degree to the fixation of dearness allowance also.

21. It was noticed earlier that the management's one main objection against the workers demand was that the financial condition of S.S. Light Railway was precarious and did not warrant its shouldering any additional burdens. Financial capacity of the employer has very limited relevance in the determination of minimum wage payable to a worker. It may be attracted if the effect of an increase in the wage burden will result in ousting him from the business since the dominant consideration in industrial adjudication is the achievement of employment and of industrial peace. The maintenance of employment will indeed remain in the background of wage fixation as will be in the case of dearness allowance also. Within these limitations, the financial position of the S.S. Light Railway will indeed deserve consideration.

22. The employers have furnished the figures of Gross Earnings, of their working expenses including replacement and renewals and of the net earnings from 1956-57 to 1961-62. They have relied on these figures, which show that from the amount of Rs. 9,51,124 as net earnings in 1956-57, the figure came down to a minus balance of Rs. 1,03,413 in 1958-59, then in the following year *i.e.*, in 1959-60, there was net earning of Rs. 79,859 only but again there was a working

deficit of Rs. 1,21,232 in 1960-61 and in 1961-62 there was a net earning of Rs. 1,11,807 only. With the decreased passenger earnings, it is claimed, the railway company is economically not in a position to bear any further charges. It is stated that road competition started soon after 1956-57 when a road parallel to the Railway-line was completed between Shahdara and Saharanpur and causing the earnings from passenger traffic considerably fell.

23. It does appear that either on account of the road-competition or due to other causes also the passenger earnings experienced a sudden fall in 1957-58 and also 1958-59. But from 1959-60 they showed some improvement, perhaps, as a result of some regulations enforced on the flow of road traffic. Indeed appreciable improvement was noticeable in 1961-62 indicating that the worst point was over. However, the employers point out that the company has to meet a number of charges, including debenture interest, interest on overdrafts and expenses on replacements and renewals, hence the meagre earnings were wholly insufficient to meet them either even though they were of a primary nature. They have gone to the extent of alleging that owing to paucity of resources, they were unable to affect replacements and renewals in the Rolling Stock though overdue. In this background, any increase in the wage burden will, in their view adversely affect the fulfilment of the above liabilities of a primary nature.

24. Ordinarily, the state of affairs as it existed upto 1961-62 was bound to weigh materially while adjudging the claim for increased dearness allowance. But there have been two recent developments which have substantially altered the picture. There has admittedly been a rise since October 1, 1962 in the passenger fare rates by approximately 25 per cent. There has been a rise in the freight also by 10 per cent approximately since January 1, 1963. These increases in the fares and freights have also begun to reflect in the total earnings which in the case of the former improved very substantially in the very first month. Though the improvement recorded in October, 1962 was not noticed to the same extent in November or December—it is not possible in the absence of complete material to express any opinion on the causes therefor—the fact remained that the earnings in future will, in all probability, be far higher, in any case in the proportion of the increase affected in the rates. Besides, the railway line owned and operated by the Company traverses an area promising increased industrial and agricultural activity. With this background and the growing industrial importance of Shahdara and the adjoining areas, there is every reason to think that this railway was bound to attract more and more traffic in future while its earnings will also be appreciably higher. And looking at the increases in the rates, there is sufficient assurance that whatever might have been the considerations up 1961-62, the trading results after October 1962 will not only do away with the gloom presently shadowing the Company but will restore financial stability. There is no reason to fear either from the improved figures that the company will not be able to meet the additional burden of dearness allowance which shall be presently decided.

25. Reference was made earlier to the two grounds on which the workmen were asking increased dearness allowance. They contended that the cost of living had considerably gone up since 1951 when the amount of dearness allowance was last fixed. In their view, a far higher amount than Rs. 12 per month, will be necessary to neutralise the rise in prices since 1951. But they are prepared to cut down their demand to an increase of Rs. 12 only per month, that is the amount by which their emoluments fall short of the total of the basic wage and dearness allowance admissible to employees on the State Railways. They would do so as their case also is that ever since Abdul Shakur's Award, that is 1944, the employees on the State Railways and the employees on the S.S. Light Railway have in this respect been treated at par. As a matter of fact, they have even pleaded that the parity between the two in the matter of dearness allowance is in any case has become a condition of their service.

26. Abdul Shakur's Award was enforced by the then Government of India under Rule 81-A of the Defence of India Rules current at the time. One of the provisions enforced was that the administration of the Saharanpur Shahdara Light Railway shall give to its employees with effect from 1st of April, 1944 dearness allowance on the scale which should be admissible from time to time on the North-Western Railway. As a result of this Order the employees of this Railway started getting dearness allowance on the scale applicable to the servants of the State Railways. The parity in that respect was declared both for the time being and also to continue from time to time. That is, they were placed at par, so long as that Order continued to apply and affect their employment, in the same position as servants of the State Railways in the matter of dearness allowance.

27. There is no suggestion that the parity enforced through this Order was at any subsequent time terminated whether by any notice or other action. As a matter of fact, the employers do not point out any change in that direction until February, 1948 when on the 23rd of that month a settlement was arrived at between them, on the one hand, and the workmen, on the other. By this settlement, Ex. E-1, the minimum pay of the employees was altered to Rs. 50 in the case of clerical staff and to Rs. 30 in the case of inferior staff. And so far as dearness allowance was concerned, it was affirmed that the same including the grain concessions would continue as before with one alteration which I shall presently discuss. Besides the cash dearness allowance, employees on the State Railways used to get certain grain concessions also. Those concessions were available to the employees of this Railway as well in terms of Abdul Shakur's Award. The alteration referred to above introduced by the settlement of 1948 was to this extent only that some of the articles of food included in the concessional list were taken off and in lieu thereof a sum of Rs. 5 per month was allowed to every employee. The following extract from the relevant para of the settlement is pertinent:—

> "The commodities mentioned below which are now included in the list of articles to be supplied at concessional rates will be taken off the list. Some of those are not being supplied quite regularly for the past some months as they were not freely available then. The management will pay for the commodities so taken off a sum of Rs. 5 (five) P.M. to every employee from 1st July 1947. This payment will be continued at least for a period of two years minimum, that is, upto 30th June, 1940 even if the supply of the commodities at concessional rates is discontinued in the meanwhile. This payment will, however, be continued if the supply of commodities at concessional rates as at present continues after 30th June, 1949. The commodities so taken off are:—
>
> 1. Potatoes.
> 2. Onions.
>
> Dhania or chilly whichever the Union would specify; but once the option is exercised it shall not be later changed."

The management's contention is that by taking off some of the commodities from the concessional list and by giving a cash allowance in lieu thereof, the parity claimed with the employees of the State Railways was discontinued inasmuch as these employees were thereafter not getting the identical concessions as allowed to State employees.

28. This contention cannot help the employers for two reasons. Firstly, the moment it is contended that the sum of Rs. 5 made payable every month was in lieu of the withdrawal of certain commodities from the concessional list, the intention far from departing from the pattern applicable to State employees, was precisely to continue to abide by it. The cash equivalent was only a device to overcome the difficulty experienced owing to the non-availability of the particular commodities. The underlying intention nevertheless was that the two will continue to be governed in the matter of dearness allowance, substantially by the scales etc. applicable to State Employees. Otherwise, there was no meaning in giving the concession of Rs. 5 in lieu of those commodities. That this was really so is further affirmed by the provision that the demand of Rs. 5 per month though initially limited to a period of two years, was to continue in future also if the supply at concessional rates continued after 30th June, 1949. The reference of supply of commodities at concessional rates was evidently to supplies to employees of State Railways. By linking the continuance of the allowance of Rs. 5 with the supply of commodities at concessional rates to employees of State Railways, the parties could have no other meaning than that the two sets of employees shall be at par in the matter of dearness allowance.

29. From January 1, 1949, the State Railways altered their scheme of supply of commodities at concessional rates. Thereafter while limiting the concession to the case of staff getting a basic wage of less than Rs. 250, an option was allowed to the persons entitled to take instead a cash amount therefor. We find from the circular, Ex. W-4, dated 7th December, 1948 issued by the Shahdara Saharanpur Railway that similar facility was offered to the employees of the S.S. Light Railway also. It appeared that a number of workmen opted for cash dearness allowance while some others did not notify their option. On 16th of February, 1949, the Superintendent of Shahdara Saharanpur Railway then issued Circular, Ex. W-6, giving the names of persons who had opted for the scheme of cash

dearness allowance. Here again reference was made to the similar scheme sanctioned by the Railway Board. Once again the back ground of parity between the two was recognized.

30. One further change was affected in the rates of dearness allowance in 1951. On this occasion, too, the scheme gave effect to the line on which changes were introduced in the case of employees of State Railways (Please see Ex. E-12 and Ex. W-7), the former containing the rates of dearness allowance as sanctioned to the State Railway employees and the latter, which is the circular by the Shahdara Saharanpur Railway, enforcing the same rates.

31. It will appear from the above narration of facts that the same rates of dearness allowance continued to apply to employees of Shahdara Saharanpur Railway as in the case of employees of State Railways, right from 1944 to this date when the interim relief was granted to the employees of the State Railways persuant to the interim recommendation of the Second Pay Commission. A change, if it can be so termed, was permitted for the first time in 1959 by the Settlement of 30th October, 1959. But as shall presently appear this so-called change was interim and transitional only in nature and did not alter the basic condition.

32. Having carefully considered the agreement, it is not possible to construe it as affecting any change in the basic condition namely, that the employees of the S.S. Light Railway were governed by the same scheme of dearness allowance as applied to the employees of the State Railways. Neither the fact that a lesser amount was accepted nor that it was to remain in force for one year at least made any difference. These changes were permitted pertinently in the background of the then financial position of the Company, but there was no intention to depart from the main scheme which both parties understood was the scheme of dearness allowance applicable to employees of State Railways.

33. The Second Pay Commission while recommending the increase of Rs. 10 per month in the dearness allowance—Rs. 5 by way of interim relief and a similar amount in its final recommendation—also directed that the dearness allowance which used to be paid earlier shall be absorbed in the basic salary of the employee concerned. As a result, his basic salary increased but the amount on account of dearness allowance went down. The total emoluments, however, recorded an increase as recommended by the Pay Commission. It was suggested in the course of arguments that in judging the parity in the matter of dearness allowance between the two sets of employees, comparison should be made between the amount of dearness allowance instantly payable to the servants of the State employees and that payable to the employees of the S.S. Light Railway. This contention is obviously founded on the reasoning that the parity claimed being in respect of dearness allowance, it should be judged also with reference to its amount above.

34. The cost of living allowance cannot be detached from the basic pay with which it is intimately linked being a device to counteract the rise in prices. It is essentially a component of basic wage. What the Second Pay Commission did was that for future the cost of living allowance upto the limit recommended by it was merged in basic wage. By so doing it no doubt protanto changed its description by treating it as basic wage but it was really dearness allowance now so-called. Therefore, for purposes of parity the true test still will be that the portion of the dearness allowance thus absorbed in the basic salary plus the portion of dearness allowance which continued to be payable as such to the employees of the State Railways should be treated as the figure on account of dearness allowance. I do not think the merger of any portion of the dearness allowance in the basic pay has adversely effected the claim of the workmen.

35. It would appear from the foregoing discussion that the employees of the S.S. Light Railway have eversince Abdul Shakur's Award been indeed treated at par with the employees on the State Railways. Not only this, the parties also have throughout understood to be governed in that matter by those terms. In the above background, whatever might have been its origin, the above term acquired the status of a condition of service of these employees. They are, therefore, entitled to an increase in the rate of their dearness allowance equal to Rs. 12 per month by which amount their emoluments fall short presently as compared to those under the State Railways.

36. The question that will still require consideration is the date from which they shall be entitled to this difference or any portion thereof. Ordinarily, the Tribunal should have thought it necessary to award the increase and to the

extent allowed from time to time to the employees of the State Railways, but when I view the financial difficulties through which the S.S. Light Railway passed during the last few years as also the fact that a fairly long period has intervened since the grant of increased dearness allowance to the employees of the State Railways, I will hesitate to give the increase retrospectively. Moreover, it is only on account of the increased passenger-fare-rates and freights that the financial gloom, which overcast the Company, has been overcome and these increases have, substantially, weighed with the Tribunal in adjudging the increased dearness allowance. The benefit of increase should accrue in the future period only which I appoint to commence from April 1, 1963. In the result, therefore, I award that the employees of S.S. Light Railway in receipt of Rs. 250 and less as basic salary shall with effect on and from April 1, 1963 be allowed a further amount of Rs. 12 per month by way of increase in their dearness allowance. The employers will also pay Rs. 300 (three hundred) to the Union, the Opposite Party, on account of costs of these proceedings.

J. K. TANDON,
Presiding Officer.

The 23rd March, 1963.

ORDERS

New Delhi, the 28th March 1963

S.O. 1000.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the State Bank of Bikaner and Jaipur and their workmen in respect of the matter specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal of which Shri J. K. Tandon shall be the Presiding Officer with headquarters at Lucknow and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE.

Whether the amount of 50 nP. per night paid to Shri Man Singh, peon in the Bali Branch of the bank during the period March 1962 to May 1962 for performing the night guard's duty constitutes sufficient remuneration and, if not, to what further relief is he entitled?

[No. 51(2)/63-LRIV.]

S.O. 1001.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Punjab National Bank Limited and their workmen in respect of the matter specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal of which Shri J. K. Tandon, shall be the Presiding Officer, with headquarters at Lucknow and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE.

Whether the management of the Punjab National Bank Limited was justified in treating 1st December 1951, as the date of promotion of Shri R. K. Tandon, as supervisor and, if not, what date should be treated as the date of promotion of Shri R. K. Tandon and to what relief is he entitled?

[No. 51(21)/63-LRIV.]

New Delhi, the 29th March, 1963

S.O. 1002.—Whereas the industrial disputes specified in the Schedule annexed hereto were pending before the Industrial Tribunal, Delhi, constituted by the notification of the Government of India in the Ministry of Labour and Employment No. S.R.O. 2389, dated the 10th July, 1957;

And, whereas, the said disputes were transferred to the Industrial Tribunal, Dhanbad in this Ministry's Order No. 55(5)/63-LRIV, dated the 7th March, 1963;

And, whereas, for the ends of justice and convenience of the parties the said disputes should be disposed of without delay;

Now, therefore, in exercise of the powers conferred by section 7A, clause (d) of sub-section (1) of section 10 and sub-section (1) of section 33B of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Shri J. K. Tandon, as the Presiding Officer, with headquarters at Lucknow, withdraws the proceedings in relation to the said disputes from the Industrial Tribunal, Dhanbad, and transfers the same to the Industrial Tribunal constituted with Shri J. K. Tandon, as the Presiding Officer thereof and directs that the said Tribunal shall proceed with each of the said proceeding from the stage at which it is transferred and dispose of the same according to law.

SCHEDULE.

Sl. No.	Parties to the dispute	No. of Original Reference.	Date of Original Reference.	Date of transfer to Dhanbad Tribunal.
1	2	3	4	5
1.	Central Bank of India Ltd., and their workmen.	S. O. 2468	7-10-1961	7-3-1963
2.	Central Bank of India Ltd., and their workmen—Shri Amar Nath.	S. O. 667	23-2-196	-3-1963

[No. 55(5)/63-LRIV.]

S.O. 1003.—Whereas an industrial dispute between the State Bank of India, and their workmen in respect of the matter specified in the Schedule hereto annexed was referred for adjudication to the Industrial Tribunal at Patiala presided over by Shri Girdhari Lal Chopra, by the Order of the Government of India in the Ministry of Labour and Employment, No. S.O. 395, dated the 29th January 1963 and was pending before the said Industrial Tribunal;

And, whereas, the services of Shri Girdhari Lal Chopra have ceased to be available;

Now, therefore, in exercise of the powers conferred by section 7A, clause (d) of sub-section (1) of section 10, and sub-section (1) of section 33B of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Shri K. L. Gosain, as the Presiding Officer with headquarters at Patiala, withdraws the proceedings in relation to the said dispute from the Industrial Tribunal presided over by Shri Girdhari Lal Chopra and transfers the same to the Industrial Tribunal constituted with Shri K. L. Gosain, as the Presiding Officer thereof and directs that the said Industrial Tribunal shall proceed with the said proceedings from the stage at which it is transferred to it and dispose of the same according to law.

SCHEDULE.

Whether the management was justified in promoting Shri Baldev Raj to officiate as Head Cashier at the Jullundur City Branch of the Bank in supersession of the claims of Shri Satpal Tandon and, if not, to what relief is Shri Satpal Tandon entitled?

[No. 51(54)/62-LRIV.]

S.O. 1004.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the State Bank of India and their workmen in respect of the matter specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal of which Shri K. L. Gosain, shall be the Presiding Officer with headquarters at

Patiala and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE

Whether the transfer of Shri I. D. Aggarwal from Jullundur Cantonment Branch to Amritsar Branch is justified and, if not, to what relief is he entitled?

[No. 51(6)/63-LRIV.]
G. JAGANNATHAN, Under Secy.

New Delhi, the 27th March 1963

S.O. 1005.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), and in supersession of the notification of the Government of India in the Ministry of Labour and Employment, No. S.O. 3415, dated the 3rd November 1962, the Central Government hereby appoints Shri H. P. Tripathi to be an Inspector for the whole of the State of Madhya Pradesh for the purposes of the said Act and any scheme framed thereunder, in relation to any establishment belonging to, or under the Control of the Central Government or in relation to any establishment connected with a railway company, a major port, a mine or an oil-field or a controlled industry *vice* Shri R. C. Roy.

[No. 17(32)/62-PF. I.]

S.O. 1006.—In pursuance of the provisions of paragraph 20 of the Employees Provident Funds Scheme, 1952, and in supersession of the notification of the Government of India in the Ministry of Labour and Employment, No. S.O. 3416, dated the 3rd November 1962, the Central Government hereby appoints Shri H. P. Tripathi as the Regional Provident Fund Commissioner for the whole of the State of Madyha Pradesh, *vice* Shri R. C. Roy, and directs that Shri Tripathi shall work under the general control and superintendence of the Central Provident Fund Commissioner.

[No. 17(32)/62-PF. I.]

P. D. GAUHA, Under Secy.

New Delhi, the 27th March 1963

S.O. 1007.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the matter of an application under Section 33A of the said Act from Shri Prodyot Kumar Bhuiya, Mining Sardar, Kendra Colliery.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

MISC. APPLICATION NO. 6 OF 1963

Under Section 33A of I.D. Act

(Arising out of Reference No. 29 of 1962)

PARTIES:

Shri Prodyot Kumar Bhuiya, Mining Sirdar, Kendra Colliery—*Applicant.*

Vs.

The Manager, Kendra Colliery of Messrs. Samla Collieries Limited. P.O. Pandeveswar (Burdwan)—*Opposite Party.*

PRESENT:

Shri L. P. Dave, Presiding Officer.

APPEARANCES:

On behalf of Applicant. — Shri Keshab Banerjee, General Secretary, Colliery Mazdoor Union
AND
Shri Nikhil Ranjan Roy, Member, Executive Commmittee of Indian National Trade Union Congress.

On behalf of Opposite Party. — Shri Mohit Kumar Mukherjee, Advocate.
Shri R. N. Srivastava, Labour Officer, Kendra Colliery.

STATE: West Benagl. INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant alleges that he was employed in the Kendra Colliery belonging to the opposite party from 7th October, 1961; that under the terms of his appointment he was not transferable to any other colliery; that on 10th December, 1962, 14th December, 1962 and 15th December, 1962 he had to write certain letters to the Manager of the colliery, that because of this the management got annoyed with him and issued a letter to him on 15th December, 1962 transferring him immediately to the Samla colliery; that the applicant wrote to the management that he could not be so transferred; that still his work was stopped; that ultimately a charge-sheet was issued against him; that he replied to it; that without giving him proper opportunity to defend himself, the management dismissed the applicant from service with effect from 10th January, 1963; that this action was illegal as the order of dismissal was passed during the pendency of Reference No. 29 of 1962; hence the present application.

3. The Opposite party contended *inter alia* that under the terms of appointment of the applicant he was liable to be transferred to any other colliery; that it is not true that the management got annoyed with him for any of his activities; that as a matter of fact, on a request made by him on 1st October, 1962, he was appointed as an Overman in the Ramnagar colliery, but that on his further representation his transfer was postponed by two months; that on the expiry of the two months he was transferred to work at another colliery; that the applicant joined the new duty on 17th December, 1962 but did not start work; that thereupon he was duly chargesheeted and after a proper enquiry he was dismissed;

4. The Samla collieries are the owners of four collieries named Kendra Colliery, the Samla Colliery, the Ramnagar Colliery and the Chatrisgonda Colliery. The applicant was appointed as a Mining Sirdar in the Kendra Colliery by a letter of appointment dated 4th October, 1961. This letter contains a clause 8 that his service could be transferred to any other department or to any other colliery of the company. The applicant's case is that this clause was deleted at the time of his appointment, whereas the opposite party denies this allegation. The applicant joined the Kendra Colliery and worked there. On 1st October, 1962 he approached the Agent of the colliery with a written application stating that he had passed the Overman's examination and requested that he should be absorbed as an Overman from that date. On the very day, he was appointed as Overman at the Ramnagar colliery and he was informed about it in writing. Two days after this, he made a request to the Agent stating that he would be in difficulty if he was posted at Ramnagar colliery which was quite unknown to him and it would take some time to get himself acquainted with the workers there. He further stated that this would affect him as he was going to appear at the Second Class Mine Manager's Certificate examination to be held in December 1962 and requested the Agent that considering his situation he may be posted at Kendra. In reply to this, he was informed that his transfer to Ramnagar colliery as Overman was postponed for two months and that he should work as Overman-*cum*-Shot firer at Kendra colliery. He thereupon continued to work at the Kendra colliery. On 15th December, 1962 he was transferred to Samla colliery with immediate effect. On 17th December, 1962 he reported to the Agent stating that according to the terms and conditions of his appointment he was not liable to be transferred from Kendra colliery to any other place. On the 18th he wrote another letter stating that he had been suspended from the work and he failed to understand how this could be done. On the 22nd the Manager of the Kendra colliery asked him to vacate the quarters from Kendra colliery and shift to the Samla colliery. On the 24th he said that he had written to the Agent to withdraw the transfer order and that the question of his transfer could not arise under the terms and conditions of his appointment. On the 25th he also wrote to the Agent to the same effect. On that very day the Agent replied to him stating that under the terms of his appointment he was liable to be transferred. Ultimately on 31st December, 1962 a chargesheet was served on him by the Manager, Samla colliery, stating that he had absented himself from duty without permission or prior information and had committed breaches of items Nos. 6, 14 and 16 of Rule 18 of the Standing Orders. To this he replied stating that he had never approached the Manager of Samla colliery for duty and that no duty was allotted to him. He further said that he was an employee of the Kendra colliery; that he had all along protested against his transfer from Kendra colliery;

and that the Manager of the Samla colliery had no jurisdiction to issue any chargesheet against him. An enquiry was held in respect of this chargesheet on 7th January, 1963 by the Welfare Officer, who, by his report dated 9th January, 1963, held the charge proved and recommended his dismissal. He was accordingly dismissed by a letter of 10th January, 1963. As this order was passed during the pendency of Reference No. 29 of 1962, this application has been made under Section 33A of the Industrial Disputes Act.

5. The differences between the parties are only on two points. The first is whether the applicant could be transferred from Kendra colliery to Samla colliery or not and the second is whether he did report for duty at the Samla colliery on 17th December, 1962. Now, so far as the first point is concerned both parties have produced the appointment order under which the applicant was appointed as a Mining Sirdar in October 1961. Clause 8 of that letter of appointment mentions that the service of the applicant may be transferred to any other department or to any other colliery of the company or to any other sister concern. The applicant's case is that when he saw this order he objected to this clause and he approached the Agent. The Agent was then busy and asked him to wait. After about two hours, a clerk went to the applicant with the appointment order in which clause 8 had been deleted. The copy produced by the applicant shows this para deleted; while the copy produced by the opposite party has the para intact. I am not quite satisfied about the applicant's version on this point. He nowhere says that the Agent agreed to his contention that he should not be made liable to transfer or that the Agent agreed to delete clause 8 of the appointment order. He is not able to give any details about the clerk who is said to have given him this letter after deleting para 8. The deletion of para 8 bears no initials. The applicant is not able to say even the name of the clerk nor is he able to say whether this clerk is at present working in the colliery or not. He admits that even after the present dispute arose, he did not make any enquiry about this clerk or about his name. It may be noted that the Agent who was there in October 1961 is now not there. It is easy for a person to say that he had requested that this clause should be deleted; but curiously enough, he is not able to assert definitely that the Agent agreed to it nor is he able to assert as to who deleted it and makes a very vague statement that some clerk whose name he does not know brought this letter after deleting the above para which correction, as I said above, has not been initialled.

6. Looking to the probabilities also, I do not see any reason why the Agent or the management should have agreed to delete the above clause. The Samla Collieries Limited are the proprietors of four collieries, all of which are not far from each other. Normally an employee is liable to be transferred from one colliery to another belonging to the same concern. If the applicant's case was that there was a special contract in his case, he should have established it by cogent and reliable evidence which he has failed to do.

7. Apart from this and even assuming that it was agreed at the time of his appointment that he would not be liable to transfer, that agreement would relate only to his appointment as Mining Sirdar. He worked as Mining Sirdar from October 1961 till the end of September 1962. As I said above, on 1st October, 1962 he approached the Agent with a request to be appointed as Overman and he was appointed as Overman at Ramnagar colliery on a higher salary. He then made a request that he would have some difficulties if he was posted at Ramnagar colliery and requested that he may be kept at Kendra colliery. As a result of this request, his transfer to Ramnagar was postponed by two months. The applicant did not then say that he was not liable to be transferred anywhere else. He says that this was because he felt firstly that if he raised that question at that time, he may be put in a different shift and also that he may not be appointed as Overman at all. The latter appears to me to be the crux of the whole thing. He wanted the post of an Overman. When he applied for it, the management had the right either to appoint him as an Overman or not to do so. If they appointed him as Overman, it was a fresh appointment with fresh terms and conditions of service and the previous terms and conditions of service as a Mining Sirdar would come to an end. This would mean that even if there was an agreement at the time of appointing him as Mining Sirdar that he would not be liable to be transferred, that agreement would not apply to his appointment and transfer as an Overman. In my opinion, both under law and by implied agreement as can be seen from the management's letter of 4th October, 1962, the applicant was liable to be transferred from Kendra Colliery to any other colliery belonging to the same concern.

8. He was, as I said above, transferred to Samla colliery on 15th December, 1962. He did not join his duties at the Samla colliery. He thus failed to carry out lawful orders and was liable to be chargesheeted and dismissed.

9. It was argued that the charges as mentioned in the chargesheet could not be held proved, because, in the chargesheet, it was stated that duty was allotted to him on 17th December, 1962 and that he absented himself from duty without permission or prior information to his superiors. It was contended that he had never joined at the Samla colliery and no duty was allotted to him at the Samla colliery on 17th December, 1962. It was further contended that all that could be said against him was that he had failed to carry out his transfer from Kendra to Samla; but that a charge to that effect was not framed and the charge as framed could not be held proved.

10. The Management's case is that the applicant did go to the Samla colliery on 17th December, 1962 and reported for duty and that duty was assigned to him but that he did not join it and he thus committed a breach as alleged in the chargesheet. In this connection, the manager and the Office Superintendent of colliery were examined as witnesses before the Enquiry Officer. Both of them stated that the applicant went to the colliery on 17th December, 1962 and reported for duty and also that duty was assigned to him in the night shift. The in-charge of the colliery was also examined and he also stated that the Manager had asked him to arrange for the duty of the applicant in the night shift. The applicant however did not report for duty at night. The Enquiry Officer has believed all this evidence. I am not sitting in appeal against the decision of the Enquiry Officer. I can interfere only if I find that there was no proper enquiry or that there was want of bonafides or that it was a case of victimisation etc.

11. It was argued that no proper enquiry was held; that the statement of the Manager and the Office Superintendent were not recorded in the applicant's presence; that the statement of in-charge was recorded in his presence but he was given no opportunity to put any question to him. The only allegation made in the application regarding the enquiry is that the applicant was not given proper opportunity to defend himself. No details were mentioned at that time.

12. The proceedings of the departmental enquiry show not only that the statement of the Office Superintendent and the Manager were recorded in the presence of the applicant but he has actually cross examined him. In his deposition, the applicant had to admit that he did cross examine the Manager. He also admitted that on 17th December, 1962 he had gone to the Office of the Samla colliery in the morning and had seen the Manager there. His explanation is that he had gone there because he had met the Manager on the previous day on the football ground and the Manager had asked him to see him at his office and so he had gone there and at that time the Manager advised him to join work at Samla colliery and work there for about a month and in the meanwhile find out a job elsewhere. This appears to be improbable. If the applicant's case is that he never wanted to join at the Samla colliery, there was no reason why he should have gone to the office of that colliery on the morning of the 17th. Very probably he went there with the idea of joining but later on he changed his mind probably because he was allotted work in the night shift. It may be noted that the present explanation as to why he had gone to the office of the Samla colliery in the morning of 17th is stated by him for the first time in his deposition before the Tribunal. Before the Enquiry Officer he stated that he had gone to the Samla colliery on the 17th to study the local situation.

13. I do not believe the applicant's allegation that he had not been given a proper opportunity to defend himself. In my opinion, the enquiry was properly held. He was admittedly present at the enquiry; the statements of witnesses were recorded in his presence and he was given opportunity to cross examine them and that actually he did cross examine two of them. Looking to the evidence on record before me and looking to the circumstances in the case, I think that the Enquiry Officer had materials before him from which he could hold that the applicant had reported for duty on the 17th; that work was allotted to him and that thereafter he did not work and left without permission. In my opinion, the charge against him was properly held proved. I might also repeat that according to the applicant, he was not liable to be transferred from Kendra to Samla and he was not prepared to work at any place excepting Kendra. This contention of his has no force. In any case, therefore, he had failed to carry out lawful orders. The Management was, therefore, justified in dismissing him.

In the result, the applicant is held not entitled to any relief and so this application is dismissed. There will be no orders to costs.

Sd./- L. P. DAVE,
Presiding Officer.
[No. 2/48/62-LRII.]

The 19th March, 1963

S.O. 1008.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the matter of an application under section 33A of the said Act, from Shri Ram Chand Shaw, Line Mazdur, Bankola Colliery.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

MISC. APPLICATION NO. 4 OF 1963

Under Section 33A of I.D. Act

(Arising out of Reference No. 31 of 1962)

PARIES:

Shri Ram Chand Shaw, Line Mazdur, Bankola Colliery—*Applicant.*

Vs.

The Manager, Bankola Colliery, P.O. Ukhra, District Burdwan—*Opposite Party.*

PRESENT:

APPEARANCES:

Shri L. P. Dave, Presiding Officer.

On behalf of Applicant. } Shri Kalyan Roy, Vice-President, Colliery Mazdoor Sabha.

On behalf of Opposite Party. } Shri K. C. Ray, Chief Personnel Officer, Bankola Colliery.

STATE: West Bengal. INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant filed the present application alleging that during the pendency of Reference No. 31 of 1962 which related to an industrial dispute between the management in relation to the Bankola Colliery and their workmen, he was dismissed by the management by a letter, dated 10th December, 1962 which action was in contravention of Section 33 of the Industrial Disputes Act. The Opposite party contended *inter alia* that the present application was not maintainable as there had been no violation of the provisions of Section 33 of the Industrial Disputes Act as the Opposite Party had already filed an application under Section 33(2)(b) of the Industrial Disputes Act for approval of the action of the management.

3. When the matter came up for hearing, the applicant stated that he did not want to proceed with the present application in view of the fact that the Management had already filed an application under Section 33(2)(b) of the Industrial Disputes Act and there was thus no contravention of Section 33. It was further stated that the applicant's grievances would be considered by the Tribunal in the application filed by the Management for approval of their action. In any case, as Section 33 has not been violated, the applicant had no right to make an application under Section 33A and therefore withdrew the present application.

In the result, this application is allowed to be withdrawn.

Sd./- L. P. DAVE,
Presiding Officer.
[No. 2/66/62-LRII.]

The 18th March, 1963.

S.O. 1009.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta in the matter of an application under Section 33A of the said Act, from Shri Ram Nanda Kolri, Line Mazdur, Bankola Colliery.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

MISC. APPLICATION NO. 2 OF 1963

Under Section 33A of I.D. Act:

(Arising out of Reference No. 31 of 1962)

PARTIES:

Sri Ram Nanda Koiri, Line Mazdur, Bankola Colliery—*Applicant.*

Vs.

The Manager, Bankola Colliery, P.O. Ukhra, District Burdwan—*Opposite Party.*

PRESENT:

Shri L. P. Dave—*Presiding Officer.*

APPEARANCES:

On behalf of Applicant. } Shri Kalyan Roy, Vice-President, Colliery Mazdoor Sabha.

On behalf of Opposite Party. } Shri K. C. Ray, Chief Personnel Officer, Bankola Colliery.

STATE: West Bengal. INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant filed the present application alleging that during the pendency of Reference No. 31 of 1962 which related to an Industrial dispute between the management in relation to the Bankola Colliery and their workmen, he was dismissed by the management by a letter dated 10th December, 1962 which action was in contravention of Section 33 of the Industrial Disputes Act. The Opposite Party contended *inter alia* that the present application was not maintainable as there had been no violation of the provisions of Section 33 of the Industrial Disputes Act as the Opposite Party had already filed an application under section 33(2)(b) of the Industrial Disputes Act for approval of the action of the management.

3. When the matter came up for hearing, the applicant stated that he did not want to proceed with the present application in view of the fact that the Management had already filed an application under Section 33(2)(b) of the Industrial Disputes Act and there was thus no contravention of Section 33. It was further stated that the applicant's grievances would be considered by the Tribunal in the application filed by the Management for approval of their action. In any case, as Section 33 has not been violated, the applicant had no right to make an application under Section 33A and therefore withdrew the present application.

In the result, this application is allowed to be withdrawn.

Sd./- L. P. DAVE,
Presiding Officer.

The 18th March, 1963.

[No. 2/66/62-LRII.]

New Delhi, the 29th March 1963

S.O. 1010.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the matter of an application under Section 33A of the said Act, from Shri Gurdin Prosad, Coal Cutting Machine Mazdoor, Bankola Colliery.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

Misc. Application No. 3 of 1963

Under Section 33A of I.D. Act

(Arising out of Reference No. 31 of 1962)

PARTIES:

Shri Gurdin Prosad, Coal Cutting Machine Mazdoor, Bankola Colliery—*Applicant.*

Vs.

The Manager, Bankola Colliery, P.O. Ukhra, Dt. Burdwan—*Opposite Party.*

PRESENT:

Shri L. P. Dave—*Presiding Officer.*

APPEARANCES:

On Behalf of applicant.—Shri Kalyan Roy, Vice-President, Colliery Mazdoor Sabha.

On behalf of Opp. Party.—Shri K. C. Ray, Chief Personnel Officer, Bankola Colliery.

STATE: West Bengal. INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant has filed the present application alleging that the Opposite party dismissed him during the pendency of Reference No. 31 of 1962 and thereby violated the provisions of Section 33 of the Industrial Disputes Act; hence the present application.

3. The Opposite party contended *inter alia* that the application is not legally maintainable because the opposite party had not contravened the provisions of Section 33 of the Industrial Disputes Act and further that the opposite party had already filed an application under Section 33(2)(b) of the Act and hence there was no contravention of Section 33 of the Act.

4. There was an industrial dispute between the employers in relation to the Bankola colliery and their workmen and it was referred for adjudication to this Tribunal (being Reference No. 31 of 1962). The order of Reference was made on 23rd July 1962 and an award has been passed in that case on 14th March 1963. The applicant has been dismissed by the management with effect from 26th December 1962. In other words, the dismissal was admittedly during the pendency of the above reference.

5. Section 33 of the Industrial Disputes Act contains the provisions regarding non-changing of service conditions, dismissals etc. during the pendency of proceeding before a Tribunal. The applicant has been dismissed for a misconduct which is not connected with the original dispute. The case is therefore governed by the provisions of Sub-section (2) of clause(b) thereof. The relevant portion would read as under: "During the pendency of any proceeding before a Tribunal in respect of an industrial dispute, the employers may, in accordance with the Standing Orders applicable to a workman concerned in such dispute, for any misconduct not connected with the dispute, discharge or punish, whereby dismissal or otherwise, that workman; provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

6. Section 33A of the Act lays down that where an employer contravenes the provisions of Section 33 during the pendency of a proceeding before a Tribunal, any employee aggrieved by such contravention may make a complaint in writing in the prescribed manner to such Tribunal. It is under the provisions of this Section that the present application has been made.

7. It is not in dispute that a chargesheet, dated 3rd December 1962 was served on the applicant on 4th December 1962 and he replied to it on 6th December 1962; an enquiry was held in the matter on 8th December 1962 as a result of which enquiry he was dismissed by the letter dated 26th/27th December 1962. This letter mentions that the applicant was dismissed from service with effect

from 28th December 1962. The letter also mentions that he was offered a month's wages as required under Section 33(2)(b) of the Industrial Disputes Act which he was asked to collect immediately. The letter further mentions that the applicant should note that an application under Section 33(2)(b) for approval of the action of dismissal was being filed before this Tribunal. Actually an application, dated 27th December 1962 was sent by the Opposite party to this Tribunal and was received by this Tribunal on 31st December 1962 and has been numbered as Misc. Application No. 7 of 1926. (This application, it may be noted, has been heard along with the present application and on merits. I am not approving of the action of the Management so far as the present applicant is concerned).

8. The question is whether the present application is maintainable under Section 33A of the Act. Such an application can be maintained only if the management have acted in contravention of the provisions of Section 33. The management urge that they have not contravened the provisions of that section in as much as they dismissed the present applicant under Section 33(2)(b) and that they had offered him one month's wages and also made an application to this Tribunal for approval at the same time.

9. The law on the point has now been settled by the decision of the Supreme Court in the case of Strawboard Manufacturing Company and Govind, 1962-I, L.L.J. 420. The Court has held therein that the employer's conduct should show that the (i) dismissal or discharge, (ii) payment of wages and (iii) making of an application for approval should be made simultaneously so as to form part of the same transaction; that is, an employer when dismissing or discharging an employee should immediately pay him or offer to pay him wages for one month and also make an application to the Tribunal for approval at the same time. This is what has been done in the present case. The order for dismissal was passed on 27th December 1962 and on that very day an application was sent to this Tribunal for approval. This fact was mentioned in the order of discharge served on the applicant. By that very letter, he was also offered a month's wages as required by the proviso to Section 33(2)(b).

10. In the above case, the Supreme Court has also held that all that is required regarding payment of wages for one month is that the employer should tender the wages to the employee. If the employee choses not to accept the wages, he could not say that there had been no payment of wages to him. Though section 33 speaks of payment of one month's wages, it can only mean that the employer should tender the wages and that would amount to payment; otherwise a workman could always make the section not workable by refusing to take the wages. As I mentioned above, payment of wages for one month was offered to the applicant by the letter of dismissal. If he chose not to collect them, he could not say that the conditions of Section 33(2)(b) have not been fulfilled.

11. It was urged on behalf of the applicant that in actual fact no wages were offered to the applicant and that they were not paid to him in spite of his going to the office every day for the purpose. Reliance was placed in this connection on a letter written by him on 14th January 1963. This letter, which is a reply to the management's letter of 9th January 1963, mentions that he was surprised to receive that letter and that he had been daily going to the office to collect his dues but nothing had been paid. So far as the letter of 9th March 1963 is concerned, it is a letter in respect of wages said to be due to the applicant in respect of the period for which he was kept under suspension in excess of 10 days. It appears that the total period of suspension came to 14 days. Under the Standing Orders, a workman could be suspended without pay only for 10 days. The management interpreted the Standing Orders to mean that a person can be suspended without pay for 10 working days and as the working days during the period of 14 days of suspension were 12, they said that they were bound to pay him only 2 days wages and by the above letter they offered to him those two days' wages and he was further told that he had been advised to collect this amount but he did not do so. There is probably some force in the contention of the workmen that the management's interpretation is not correct and that suspension of 10 days cannot be interpreted to mean suspension for 10 working days. This is however not a question which is in issue before me and I am therefore not expressing an opinion on it. But even according to this interpretation of the workmen, he would be entitled to wages for four days and not two days. Non-payment of these wages would not amount to contravention of the provisions of Section 33(2)(b) which requires the payment of wages for one month (probably in lieu of notice) which payment was offered to him by the letter of dismissal. When the letter of dismissal itself mentions that he was

offered the wages and he should collect them, it is difficult to believe that the applicant was not paid the amount though he went to the office every day. There might have been a dispute regarding the wages for the period of suspension but there was no dispute regarding the wages for one month and I do not believe the applicant when he says that he was not paid the amount though he went to the office for the purpose. I am satisfied that the amount was offered to him when dismissing him and there was thus sufficient compliance of the provisions of Section 33(2)(b) of the Industrial Disputes Act. That being so, the employers have not contravened the provisions of Section 33 and hence the application under Section 33A would not be maintainable.

In the result, this application fails and is dismissed.

(Sd.) L. P. DAVE,
Presiding Officer.

The 22nd March, 1963.

[No. 2/66/62-LRII.]

S.O. 1011.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of a complaint under Section 33A of the said Act from Shri Dhiroo, s/o Sampath Kalar, Coal Dust Remover, and Shri Jagannath, s/o Garhulram, T. Mistry, Jhagrakhand Colliery, Post Office Jhagrakhand Colliery, District Surguja.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

In the matter of a complaint under Section 33A of the Industrial Disputes Act, 1947 (XIV of 47).

Complaint No. 12 of 1962 (arising out of Ref. 73 of 61)

PARTIES:

1. Dhiroo, s/o Sampath Kalar, Coal Dust Remover.
2. Jagannath, s/o Garhulram, T. Mistry, c/o P. O. Jhagrakhand Colliery Dt. Surguja. M. P.—*Complainants.*

Vs.

Manager, Jhagrakhand Colliery, P.O. Jhagrakhand Colliery, Dt. Surguja, M.P.—*Opposite party.*

PRESENT:

Sri Raj Kishore Prasad, M.A., B.L., Presiding Officer.

APPEARANCES.

No appearance on either side.

State: Madhya Pradesh. Industry: Coal.

Dhanbad, dated 2nd March 1963

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act, 1947, made by Dhiroo and Jagannath, the two concerned workmen of the opposite party, on 2nd April 1962 complaining against their discharge during the pendency of Reference No. 73 of 1961.

2. Usual notices were issued to the opposite party to file its written statement and it has filed it on 17th May 1962. Before, however, the case was fixed for hearing, *Jagannath*, one of the two complainants, filed a petition on 21st May 1962 asking for leave to withdraw his complaint because there has been an amicable settlement between him and the management.

3. Subsequently, Dhiroo, the other complainant, also filed a petition on 26th February 1963 asking for leave to withdraw his complaints as he has amicably settled the matter with the management.

4. In view of the petitions of withdrawal, marked Annexures A & B of both the complainants, the complaint is permitted to be withdrawn and, accordingly, it is disposed of in terms of the said petitions of withdrawal which are made parts of this case.

(Sd.) RAJ KISHORE PRASAD, Presiding Officer.

ANNEXURE A

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD.

In the matter of complaint No. 12 of 1962 under Sec. 33A of the Industrial Disputes Act, 1947 (arising out of Reference No. 73 of 1961).

PARTIES:

Dhiroo s/o Sampat, Stone Remover P. O. Jhagrakhand colliery Dt. Surguja. M. P.— *Complainant.*

Vs.

Manager, Jhagrakhand colliery. *Opposite party.*

PRAYER

Most respectfully the complainant above named begs to submit as under:

That the matter has been amicably settled with the management and the complainant does not wish to press this complaint before the Hon'ble Tribunal. The Hon'ble Tribunal may, therefore, be pleased to allow the complainant to withdraw his complaint.

Dated 25th February, 1962.

Sd/- Thumb impression of
the Complainant
Attested; Sd/- J. P. SRIVASTAVA
Sd/- K. N. PANDEY.
26. 2. 62.

ANNEXURE B

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD.

In the matter of Application No. 12 of 1962 (arising out of Reference No. 73 of 1961)

And

In the matter of an application under Section 33A of Industrial Disputes Act

PARTIES:

Jagannath s/o Garhulram, Timber Mazdoor.....*Applicant.*

Vs.

Manager, North Jhagrakhand colliery.....*Opposite party.*

The applicant above named begs to submit as under:

That it has been possible to arrive at an amicable settlement with the opposite party and the applicant has taken final settlement. In view of this, the applicant now not interested to persue this application further.

The applicant therefore prays that the Hon'ble Tribunal may be pleased to allow the applicant to withdraw the above stated application.

Sd/- L. T. I. of
JAGANNATH.

JHAGRAKHAND COLLIERY:
The 10th May, 1962

Attested Sd/- J. P. SRIVASTAVA
Presiding
Chhatisgarh Colliery Workers
Federation Branch Jhagrakhand Colliery.

[No. 4/38/61-LRII.]

S.O. 1012.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Delhi, in the industrial dispute between the employers in relation to the Palana Colliery, Palana, Rajasthan and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DELHI

PRESENT:

Shri Anand Narain Kaul,

Central Govt. Industrial Tribunal, Delhi.

28th February, 1963.

Reference I. D. No. 335 of 1962.

BETWEEN

The employers in relation to the Palana Colliery, Palana, Rajasthan;

And

Their workmen.

Dr. Anand Parkash—*For the management,*

AWARD

By S. O. dated the 18th December, 1962, the Central Government has referred to this Tribunal, for adjudication, an industrial dispute existing between the employers in relation to the Palana Colliery, Palana, Rajasthan and their workmen in respect of the matters specified in the Schedule annexed to the reference. The matters as specified in the Schedule are as follows:—

Whether the management of the Palana Colliery was justified in issuing its order dated the 7th July, 1962 in case of Shri Narain Ram S/o Peera Ram requiring him to work as coal cutter or mason mazdoor in category I? If not, to what relief is he entitled?

2. On receipt of the reference, the usual notices were issued to the parties for filling their respective written statements. No. statement of claim was, however, received on behalf of the workmen on the 1st February, 1963 which was the date fixed for the purpose. The 18th February was then fixed to allow more time to the workmen to file their statement of claim. In the meantime an application, on behalf of the Palana Colliery Mazdoor Union, representing the workmen, signed by the President and the "patron" of the Union, was received by post on the 5th February. In the application, it is stated that, while the case was being examined by the Government of India, in the Ministry of Labour & Employment for making a reference to the Tribunal, the management of the Palana Colliery sent a communication dated the 21st November, 1962 to the workmen, Shri Narain Ram S/o. Shri Peera Ram, whose transfer to another job in a different category than his original one, is the subject matter of the present reference asking him to join duty as a Chowkidar on and from 3rd November, 1962. The application states that the workman, accordingly resumed duties as Chowkidar of the Colliery and his claim for wages for the intervening period has also been fully and finally settled. The union is also stated to have given intimation of this settlement to the Ministry of Labour & Employment through a communication dated the 20th December, 1962, requesting the Government to withdraw the reference. The union further states in the application, that since the dispute has been already settled as mentioned above, an ward in the above terms may be passed in the reference. Dr. Anand Parkash appearing on behalf of the management was, however, unable to confirm the statement, made in the Union's application, in the absence of any information received from the management. He could not do so even after an adjournment was granted to him for the purpose. Since, however, it is obvious from the Union's application, that the matter in dispute had already been settled finally to the satisfaction of the union even before the reference was made and since no statement of claim as such, has been filed by the union, I have no alternative but to pass a no dispute award. I accordingly make an award to the effect that no dispute remains between the parties in view of the claim of the union having been met in full, as stated in its own application.

Sd/- ANAND NARAIN KAUL,

Central Govt. Industrial Tribunal, Delhi.

(Two pages).

The 28th February, 1963.

[No. 5/25/62-LRII.]

S.O. 1013.—In exercise of the powers conferred by sub-section (3) of section 22 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour and Employment No. S.O. 3178, dated the 15th October, 1962, namely:—

In the Table annexed to the said notification, after the entry 14, the following entries shall be inserted in columns 1, 2 and 3 respectively, namely:—

(i) "15. Regional Labour Commissioner (Central), Bombay.

The States of Gujarat, Maharashtra and the Union territory of Goa, Daman and Diu"; and

(ii) "16. Conciliation Officer (Central), Vasco-de-Gama.

The Union territory of Goa, Daman and Diu".

[No. F. 1/11/63-II-LR-I.]

S.O. 1014.—In exercise of the powers conferred by section 4 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour and Employment No. S.O. 3254, dated the 17th October, 1962, namely:—

In the Table annexed to the said notification—

(i) after the entry 34, the following entry may be inserted in Columns 1 and 2 respectively, namely:—

"34A. Conciliation Officer (Central), Vasco-de-Gama";

(ii) in column 3, for the entries "The States of Gujarat and Maharashtra" against serial Nos. 30, 34A, the entries "The States of Gujarat and Maharashtra and the Union territory of Goa, Daman and Diu" shall be substituted.

[No. F. 1/11/63-LR-I.]

ORDER

New Delhi, the 29th March 1963

S.O. 1015.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the North Bhagatdih Colliery, Post Office Dhansar, District Dhanbad, and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the workmen of North Bhagatdih Colliery, Post Office Dhansar (District Dhanbad), are entitled to extra remuneration, if any, in view of the method adopted by the management of the said colliery for loading coal from the working faces?

[No. 1/2/63/LR-II.]

A. L. HANDA, Under Secy.

CENTRAL EXCISE DIVISIONAL OFFICE, ANANTAPUR

NOTICE

Anantapur, the 2nd November 1962

S.O. 1016.—Whereas it appears that Shri Badrinarayana Lakshmichand, son of Ladhuram, Dealer in Fancy Goods, Thimmancherla Post, Guntakal was found at Pathikonda on 4th September, 1962, by the Inspector of Central Excise, Pathikonda to be in possession of 3 Mechanical lighters and 16 pilot pens—as detailed below—reasonably suspected to have been imported into the country in contravention of the Government of India's Imports (Control) Order No. 17/55, dated 7th December, 1955, as amended and issued under Section 3 of the Imports and Exports (Control) Act, 1947 read with Section 19 of the Sea Customs Act, 1878 as the said Shri Badrinarayana Lakshmichand failed to produce any cash memos or Bills in support of purchase of these articles through the normal trade channel.

Description of article	*Quantity seized*
1. Mechanical lighters—Lucky No. 7 'Super Lighter—Japan'	3 (Three)
2. Fountain Pens—Pilot. 'The Pilot Pen Manufacturing Co. Ltd., Made in Japan'	16 (Sixteen)

Now, therefore, the said Shri Badrinarayana Lakshmichand is hereby required to show cause to the Assistant Collector of Central Excise, Anantapur Division, Anantapur as to why the said Mechanical lighters and Fountain Pens particularised above, in respect of which the offence quoted appears to have been committed, should not be confiscated as provided under Section 167(8) of the Sea Customs Act, 1878.

2. Shri Badrinarayana Lakshmichand, Dealer in Fancy Goods, Thimmancherla (P.O.), Guntakal, is further directed to produce at the time of showing cause all the evidence upon which he intends to rely in support of his defence.

3. Shri Badrinarayana Lakshmichand, Dealer in Fancy Goods, Thimmancherla (P.O.), Guntakal, should also indicate in the written explanation whether he wishes to be heard in person, in his defence before the case is adjudicated.

4. If no cause is shown against the action proposed to be taken within 10 days of the receipt of this notice or he does not appear before the adjudicating officer when the case is posted for hearing, the case will be decided *exparte*.

[No. D.O.R. No. 6/62 (Customs).]

B. G. AYACHIT, Asstt. Collector.

MINISTRY OF MINES & FUEL

New Delhi, the 30th March, 1963

S. O. 1017.—Whereas by the Notification of the Government of India in the late Ministry of Steel, Mines and Fuel (Department of Mines and Fuel, S.O. No. 881 dated 13th April, 1961, under sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act 1957 (20 of 1957), the Central Government gave notice of its intention to prospect for coal in lands measuring 5786·00 acres in Block-I, 5001·43 acres in Block II and 4192 acres in Block III in the locality specified in the Schedule appended to that Notification and reproduced in Schedule I appended hereto ;

And whereas out of the said lands by the Notification of the Government of India in the Ministry of Mines and Fuel S.O. No. 3894 dated the 22nd December, 1962, the Central Government made declaration under sub-section (1) of section 9 of the said Act only in respect of the lands and rights in or over such lands mentioned in Schedule II appended hereto ;

And whereas in respect of the remaining lands no notice under sub-section (1) of section 7 has been given ;

Now, therefore, in exercise of the powers conferred by the said sub-section (1) of section 7, the Central Government hereby specifies further period of one year commencing from the 13th April, 1963 as the period within which the Central Government may give notice of its intention to acquire the said remaining lands or of any rights in or over such lands.

SCHEDULE I

Plan No. Rev/107/61
Dated 11-1-1961

RAM GARH COALFIELDS

Block I

Sl. No.	Village	Thana	Thana No.	District	Area in acres	Remarks
1.	Kumbradara	Ramgarh	149	Hazaribagh	166·13	Full
2.	Koihara	,,	150	,,	996·55	Full
3.	Lerhitongri	,,	151	,,	620.80	Part
4.	Janiamara	,,	152	,,	94·98	Full
5.	Gaurabera	,,	153	,,	201·68	Full
6.	Bhuchungdih	,,	154	,,	1433·26	Full
7.	Sewai	,,	155	,,	1158·40	Part
8.	Hutugdag	,,	156	,,	268·80	Part
9.	Tewardag	,,	158	,,	44·80	Part
10.	Banda	Gola	9	,,	800·60	Part
		TOTAL			5786·00 Acres (Approx)	

Boundary description—Block-I :

A—B line passes through Central line of Damodar River.

B—C line passes through Central line of Damodar River.

C—D line passes through village Lerhitongri, part of the Eastern boundary of village Bhuchungdih of Thana Ramgarh and through village Banda of thana Gola.

D—E line passes through village Banda of thana Gola and through villages Tewardag, Hutugdag, and Sewai of thana Ramgarh.

E—A line passes along the part of the Western boundary of village Sewai and Southern boundary of village Kumbradara of thana Ramgarh.

Block II

Sl. No.	Village	Thana	Thana No.	District	Area in acres	Remarks
1.	Darhabera	Gumia	50	Hazaribagh	249·60	Part
2.	Jharlong	Gumia	51	,,	96·64	Part
3.	Semarbera	Gumia	52	,,	1734·40	Part
4.	Dhawaiya	Gumia	53	,,	1618·89	Full
5.	Gopo	Gumia	54	,,	1228·80	Part
6.	Saraiya	Ramgarh	119	,,	13·20	Part
7.	Kundru Khurd	Ramgarh	120	,,	29·40	Part
8.	Borobing	Ramgarh	121	,,	30·50	Part
		TOTAL			5001·43 Acres (Approximately)	

Boundary Description—Block-II :

J—I line passes through Damodar River and village Semarbera of thana Gumia.

I—F line passes through villages Semarbera, Jahariong, Darbabera, Gopo and along the part of the western boundary of village Palu.

F—B line passes through village Gopo.

B—A line passes through Central line of Damodar River.

A—K—J line passes through the Central line oft he Damodar River.

Block III

Sl No.	Village	Thana	Thana No.	District	Area in Acres	Remarks
1.	Gopo . . .	Gumia	54	Hazaribagh	300·80	Part
2.	Palu . . .	Gumia	55	,,	38·40	Part
3.	Chotkipunu .	Gumia	56	,,	332·80	Part
4.	Barki Punu . .	Gumia	57		3520·00	Part
		TOTAL . . .			4192·00 Acres (Approximately)	

Boundary Description—Block III :

B-F line passes through village Gopo.

F-G line passes through villages, Palu, Chotkipunu and Barkipunu of thana Gumia.

G-H-C line passes through village Barkipunu.

C-B line passes through Central line of Damodar River.

SCHEDULE II

Drg. No. Rev./48/62, dated 17-7-1962.

(Showing lands acquired)

Sl. No.	Village	Thana	Thana No.	District	Area	Remarks
1	Koihara . .	Ramgarh	150	Hazaribagh		Part
2	Kumbradara (Kumhradhara).	Do.	149	Do.		Full
3	Sewai . . .	Do.	155	Do.		Part
4	Bhuchungdih .	Do.	154	Do.		Do.
5	Hutugdag . .	Do.	156	Do.		Do.
6	Gaurabera . .	Do.	153	Do.		Do.

TOTAL : 2510·00 Acres (Approx) or 1016·55 Hectares (Approx.).

Plot Nos. acquired in village Koihara :

1(P), 18(P), 19 to 90, 91(P), 92(P), 93 to 283, 284(P), 286 to 317, 318(P), and one unnumbered plot surrounded on North by Plot No. 91 on East by Plot No. 92, on South by Plot No. 88 and on West by Plot No. 79.

Plot Nos. acquired in village Kumbaradara (Kumhradhara); 1 to 100.

plot Nos. acquired in village Sewai :

1 to 235, 236(P), 237(P), 238(P), 239(P), 240 to 250, 251(P), 262(P), 263(P), 264 to 289 290(P), 291(P), 292(P), 293(P), 294(P), 295 to 699, 709(P), 701 to 704, 705(P), 706(P), 712(P), 713(P), 714 to 722, 723(P), 728(P), 729(P), 738(P), 739, 740, 741(P), 743(P), 954(P), 955(P), 972(P), 986(P), 1025(P), 1027(P), 1028(P), 1029(P), 1030 to 1033, 1034(P), 1035 to 1133, 1134(P), 1247(P), 1248 to 1304, 1305(P), 1376 to 1384 and one unnumbered Plot surrounded on North by Plot Nos. 1072, 1073 on East by Plot No. 1070 on South by Plot Nos. 1061, 1062, and on West by Plot No. 1071.

Plot Nos. acquired in village Bhuchungdih :

65(P), 75(P), 79(P), 80, 81(P), 83(P), 84(P), 85, 86(P), 87(P), 89(P), 91(P), 92 to 94, 95(P), 96(P), 97(P), 98(P), 99(P), 100 to 237, 238(P), 239(P), 241(P), 242 to 249, 250(P), 251 to 415, 416(P), 417(P), 427(P), 428, 429(P), 430 to 477, 478(P), 479(P), 480(P), 498(P), 500(P), 504(P), 505(P), 506(P), 507, 508(P), 513(P), 516(P), 517, 518(P), 519 to 526, 527(P), 528, 529(P), 530 to 755, 756(P), 757 to 762, 763(P), 764(P), 765 to 769, 770(P), 771(P), 776(P), 776, 777, 778, 779, 780, 781, 782(P).

Plot Nos. acquired in village Hutugdag :

4(P), 8(P), 9(P), 10, 11(P), 200(P), 201 to 250, 251(P), 253(P), 254(P), 255, 256(P), 265(P), 272(P), 283.

Plot Nos. acquired in village Gaurabera :

1(P). 6(P) & 15(P).

Boundary Description :

A-B line passes through Plot Nos. 1, 18, 91, 92 in village Koihara.

B-C line passes through Plot Nos. 1 and 6 in village Gaurabera and Plot Nos. 284 and 9 in village Koihara.

C-D line passes through Plot Nos. 92 and 318 in village Koihara Plot Nos. 237, 236, 238, 239, 236 in village Sewai, Plot Nos. 15 in village Gaurabera, Plot Nos. 251, 263, 262, 291, 290, 291, 292, 293, 294, in village Sewai and Plot Nos. 75, 79 in village Bhuchungdih.

D-E line passes through Plot Nos. 79, 75, 65 in village Bhuchungdih.

E-F line passes through Plot Nos. 65, 79, 81, 83, 84, 86, 87, 91, 89, 96, 97, 95, 98, 99, 239, 241, 238, 250, 282, 416, 417, 429, 427, 478, 480, 479, 518, 516, 513, 527, 508, 506, 504, 505, 500, 529 and 498 in village Bhuchungdih.

F-G line passes along the left bank of River Verah.

G-H line passes through Plot Nos. 770, 756, 763 in village Bhuchungdih.

H-I line passes through Plot Nos. 763, 764, 770, 771 in village Bhuchungdih and Plot Nos. 254, 251, 253, 272, and 265 in village Hutugdag.

I-J line passes through Plot Nos. 265, 256, 200, 11, 9, 8, 4, in village Hutugdag and Plot Nos. 1134, 1029, 1028, 1027 and 1034 in village Sewai.

J-K line passes through Plot Nos. 1034, part Eastern Boundary of road No. 986, through Plot No. 1025 in village Sewai.

K-L line passes through Plot Nos. 1025, 985 in village Sewai.

L-M line passes along part Western boundary of Road No. 986, through Plot Nos. 972, 955, 954, and 1034 in village Sewai.

M-N line passes through Plot Nos. 1034, 723, 728, 729, 738, along Northern boundary of Plot Nos. 737 through Plot Nos. 741, 743, 712, 705, 706, 700, 1247 and 1305 in village Sewai.

N-A line passes along the Western boundary of villages Sewai, Kumbradara (Kumhradhara) and Koihara.

[No C2-20(6)/63).]

B. ROY, Under Secy.

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